



Serious offending by Mobile European Criminals  
Improving information exchange and cross-border supervision

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## Report 2, Part Two

### Information Exchanges, Monitoring and Management - A Field Work Study of Current Responses by Member States

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## **Information Exchanges, Monitoring and Management - A Field Work Study of Current Responses by Member States**

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# Report Two, Part Two

## Information Exchanges, Monitoring and Management - A Field Work Study of Current Responses by Member States

### Contents

<b>EXECUTIVE SUMMARY .....</b>	<b>5</b>
<b>GLOSSARY OF TERMS.....</b>	<b>17</b>
<b>SECTION 1 - INTRODUCTION AND METHODOLOGY .....</b>	<b>19</b>
1.1 PROBLEM ASSESSMENT AND RATIONALE FOR THE STUDY.....	19
1.2 OBJECTIVES OF THE STUDY.....	20
1.3 DEFINING SERIOUS SEXUAL AND VIOLENT OFFENDERS.....	21
1.4 METHODOLOGY.....	22
1.4.1 <i>Participants</i> .....	22
1.5 CONSTRUCTION AND CONTENT OF THE INTERVIEWS .....	23
1.6 DATA ANALYSIS.....	24
1.7 DEVELOPMENT OF A COMPARATIVE FRAMEWORK .....	25
1.7.1 <i>Limits to a comparative approach</i> .....	25
1.7.2 <i>Comparative framework for analysis</i> .....	26
1.8 TERMINOLOGY .....	27
<b>SECTION 2 - DEFINITIONS OF SERIOUS VIOLENT OR SEXUAL OFFENDERS: WHAT IS THE POTENTIAL FOR A COMMON EU WIDE DEFINITION OF SOME TYPE OFFENDERS?.....</b>	<b>29</b>
2.1 INTRODUCTION.....	29
2.2 AGREEMENT WITH SELECTED ECRIS CODES .....	29
2.3 INCLUSION OF OFFENCES TO THE ECRIS LIST (LAW ENFORCEMENT) .....	30
2.4 INCLUSION OF OFFENCES TO THE ECRIS LIST (OFFENDER MANAGEMENT) .....	32
2.5 EXCLUSION OF OFFENCES FROM THE ECRIS LIST (LAW ENFORCEMENT).....	34
2.6 EXCLUSION OF OFFENCES FROM THE ECRIS LIST (OFFENDER MANAGEMENT) .....	34
2.7 SUMMARY .....	35
<b>SECTION 3 - THE IDENTIFICATION AND ASSESSMENT OF SERIOUS VIOLENT OR SEXUAL OFFENDERS .....</b>	<b>37</b>
3.1 INTRODUCTION.....	37
3.2 LAW ENFORCEMENT AND THE IDENTIFICATION AND ASSESSMENT OF SERIOUS VIOLENT OR SEXUAL OFFENDERS .....	37

3.3	OFFENDER MANAGEMENT AND THE IDENTIFICATION AND ASSESSMENT OF SERIOUS VIOLENT OR SEXUAL OFFENDERS .....	40
3.4	SUMMARY .....	43
3.5	MOVING FORWARD IN THE IDENTIFICATION AND ASSESSMENT OF SERIOUS VIOLENT OR SEXUAL OFFENDERS.....	44

## **SECTION 4 - THE EXCHANGE OF CRIMINALITY INFORMATION ON SERIOUS VIOLENT OR SEXUAL OFFENDERS TRAVELLING ACROSS EU BORDERS. MOVING TO A PROACTIVE/ PREVENTATIVE APPROACH ..... 47**

4.1	INTRODUCTION .....	47
4.2	CONVICTION DATA EXCHANGES VIA ECRIS .....	48
4.2.1	<i>Notifications to Home Member States via ECRIS of convictions acquired in another EU Member State .....</i>	<i>49</i>
4.2.2	<i>Taking foreign EU convictions into account in new criminal proceedings .....</i>	<i>52</i>
4.2.3	<i>Offender Management access to conviction data .....</i>	<i>53</i>
4.3	INVESTIGATION INFORMATION AND POLICE INTELLIGENCE EXCHANGES .....	55
4.3.1	<i>Methods of Exchange .....</i>	<i>56</i>
4.3.2	<i>Identifying good practice in Information and Police intelligence exchanges across EU borders .....</i>	<i>57</i>
4.4	PROACTIVE/PREVENTATIVE EXCHANGES OF CRIMINALITY INFORMATION .....	59
4.4.1	<i>A proactive, systematic approach .....</i>	<i>60</i>
4.4.2	<i>The rationale and criteria for proactive/ preventative information exchanges .....</i>	<i>60</i>
4.4.3	<i>The permissive EU framework for proactive/preventative exchanges of information .....</i>	<i>62</i>
4.4.4	<i>Where preventative information exchanges occur, how does it work? .....</i>	<i>63</i>
4.5	FACTORS LIMITING THE EFFECTIVENESS OF LAW ENFORCEMENT CRIMINALITY INFORMATION EXCHANGES .....	64
4.6	RESPONDENT SUGGESTIONS FOR DEVELOPMENT .....	65
4.7	SUMMARY .....	66
4.8	MOVING TO A PROACTIVE/PREVENTATIVE APPROACH IN EU CRIMINALITY INFORMATION EXCHANGE .....	67

## **SECTION 5 - THE MANAGEMENT, MONITORING AND INFORMATION EXCHANGE ON SERIOUS MOBILE VIOLENT OR SEXUAL OFFENDERS..... 69**

5.1	INTRODUCTION .....	69
5.2	THE RANGE OF PROVISION FOR MONITORING SERIOUS VIOLENT OR SEXUAL OFFENDERS.....	70
5.3	FOREIGN TRAVEL RESTRICTIONS AND BANS.....	72
5.4	CONTINUED MONITORING FOLLOWING THE COMPLETION OF A FORMAL SANCTION OR SENTENCE .....	73
5.5	INTER-AGENCY OR MULTI-AGENCY CO-OPERATION ON MONITORING OF SERIOUS VIOLENT OR SEXUAL OFFENDERS .....	74
5.5.1	<i>Within state inter-agency co-operation.....</i>	<i>74</i>
5.5.2	<i>Across-border co-operation .....</i>	<i>75</i>
5.6	TRANSFER OF SUPERVISION, CONDITIONAL RELEASE, AND OTHER PROBATION SANCTIONS UNDER THE COUNCIL OF EUROPE FRAMEWORK DECISION 2008/947/JHA .....	77
5.6.1	<i>Transfer of supervision .....</i>	<i>77</i>

5.6.2	<i>Conditional release</i> .....	81
5.7	MONITORING THE MOVEMENT OF SERIOUS VIOLENT OR SEXUAL OFFENDERS.....	81
5.7.1	<i>Dedicated alerts where exact details of travel are unknown</i> .....	85
5.8	DEPORTATION.....	85
5.9	FUTURE DEVELOPMENTS AS IDENTIFIED BY RESPONDENTS .....	88
5.10	SUMMARY .....	89
5.11	MOVING FORWARD IN THE EU APPROACH TO MONITORING, MANAGING AND EXCHANGING INFORMATION ON SERIOUS VIOLENT OR SEXUAL OFFENDERS.....	91
<b>SECTION 6 - RESPONDING TO INFORMATION RECEIVED ON SERIOUS VIOLENT OR SEXUAL OFFENDERS TRAVELLING ACROSS EU BORDERS.....</b>		<b>93</b>
6.1	INTRODUCTION.....	93
6.2	RESPONDING TO INCOMING INFORMATION.....	93
6.3	DIFFERENT TYPES OF RESPONSE .....	95
6.4	FACTORS WHICH LIMIT THE CAPACITY OF THE RECEIVING MEMBER STATE TO RESPOND EFFECTIVELY TO INCOMING INFORMATION .....	98
6.5	IMPROVING THE CAPACITY AND COMMITMENT OF MEMBER STATES TO RESPOND TO INCOMING INFORMATION.....	101
6.5.1	<i>A harmonised approach</i> .....	101
6.5.2	<i>Reserved for the most serious offenders and prioritised appropriately</i> .....	101
6.5.3	<i>The accurate anticipation of travel</i> .....	102
6.6	SUMMARY .....	102
6.7	MOVING FORWARD AND DEVELOPING EFFECTIVE RESPONSES TO INCOMING INFORMATION ....	103
<b>SECTION 7 - CONCLUSION AND RECOMMENDATIONS .....</b>		<b>105</b>
7.1	'A WHOLE SYSTEMS APPROACH' .....	105
7.1.1	<i>Issues arising from the research</i> .....	106
7.2	DEFINITIONS, INTERNAL IDENTIFICATION AND ASSESSMENT OF SERIOUS VIOLENT OR SEXUAL OFFENDERS IN MEMBER STATES AND BEING READY TO EXCHANGE INFORMATION ACROSS THE EU .....	107
7.2.1	<i>Key points from the SOMEK research</i> .....	107
7.2.2	<i>Potential solutions</i> .....	108
7.2.3	<i>Recommendations to achieve these improvements</i> .....	108
7.3	THE USE OF CURRENT INFORMATION EXCHANGE SYSTEMS FOR CONVICTION DATA, INTELLIGENCE EXCHANGE, AND PROACTIVE AND PREVENTATIVE INFORMATION EXCHANGE .....	108
7.3.1	<i>Key points from the SOMEK research</i> .....	108
7.3.2	<i>Potential solutions</i> .....	109
7.3.3	<i>Recommendations to achieve these improvements</i> .....	110
7.4	MONITORING AND MANAGEMENT ACROSS BORDERS AND USING INFORMATION RECEIVED .....	111
7.4.1	<i>Key points from the SOMEK research</i> .....	111
7.4.2	<i>Potential solutions</i> .....	112
7.4.3	<i>Recommendations to achieve these improvements</i> .....	113
7.5	USING INFORMATION RECEIVED TO IMPROVE DOMESTIC MANAGEMENT AND MONITORING OF INCOMING FOREIGN NATIONAL SERIOUS VIOLENT OR SEXUAL OFFENDERS.....	113

7.5.1	Key points from the SOMEK research.....	113
7.5.2	Potential solutions.....	114
7.5.3	Recommendations to achieve these improvements .....	114
7.6	IMPROVING THE SYSTEM AS A WHOLE.....	114
SECTION 8 - FULL LIST OF SOMEK RECOMMENDATIONS .....		117
REFERENCES .....		121
APPENDICES .....		125

## Executive Summary

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SOMEK is a two-year project running from January 2013 to January 2015 investigating current processes for information exchange and procedures to manage the harm posed by serious violent or sexual offenders travelling across the European Union. SOMEK is co-funded by the European Commission Directorate-General for Home Affairs - HOME/2011/AG/4000002521 30-CE-0519712/00-87.

### Introduction

A number of tragic examples have exposed weaknesses within the European Union (EU) where a serious violent or sexual offender has travelled to one Member State from another without any public safety organisation within the receiving Member State being made aware of the harm they may pose.<sup>1</sup> Often only once a further criminal act has occurred have checks been made, revealing antecedents and an indication of the previously known concerns. Serious violent or sexual offenders are therefore able to integrate into communities across the EU free from any management, supervision or surveillance, which may lead to an increase in the risk to public safety. Whilst significant strides have been made in EU community law enforcement cooperation to address issues of organised crime, human trafficking, child exploitation, terrorism and football hooliganism, the “common interest” of protecting EU citizens from the single transient serious violent or sexual offender has not been so apparent.

### SOMEK Project Objectives

The SOMEK project (Serious Offending by Mobile European Criminals) has three main aims:

1. To assess the threat posed to European citizens when serious violent or sexual offenders travel between EU Member States.
2. To identify the methods and effectiveness of information exchange mechanisms used by EU Member States in the management of serious violent or sexual offenders travelling across borders.

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<sup>1</sup> For example, the case of the murder of Moira Jones by Marek Harcar in Glasgow 2008. Harcar was originally from Slovakia, where he had 13 previous convictions, 4 for violence. Scottish Police were unaware of his potential and he entered Scotland unmonitored. Also the case of Antonin Novak who was known in Slovakia for a history of serious sexual offending who moved to the Czech Republic and his history was unknown to them. He was subsequently convicted for sexually assaulting and murdering a 9 year old boy.

3. To explore critical success factors and provide recommendations to facilitate the improved exchange of information for the prevention of crime.

This report presents the results of a field work study on current issues in exchanging information on serious sexual or violent offenders who travel across EU Member States, and considers possible ways of improving systems for information exchange. The field work data, analysis and recommendations presented in this report address the second and third SOMEK project objectives supported by the following documentation:

- A literature based report mapping existing EU information exchange mechanisms, and current issues and challenges presented by information exchange on serious mobile sexual and violent offenders, available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)
- A literature review of effective responses to sexual offenders available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)
- A short overview of 'what works' with violent offenders, available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)
- Guidance for law enforcement personnel and guidance for offender management personnel available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)

## Data Collection

The data for this report was collected via the following methods:

- 37 structured interviews with Law Enforcement (LE) personnel from 23 Member States.
- 28 structured interviews with Offender Management (OM), Probation personnel from 20 Member States.
- Structured interviews with experts on key EU wide information exchange systems such as ECRIS, EUROPOL, Schengen SIS II; law enforcement officers in SIRENE Bureaux; Embassy Liaison Officers; specialist law enforcement officers on combating serious sexual and violent offending.
- Case study collation to illustrate current practice.
- Task Groups hosted by three SOMEK partner countries in the UK, Latvia and the Netherlands attended by 37 LE and OM participants from 17 different Member States.



Whilst the study targeted lead law enforcement and offender management personnel in Member States, the difference in national structures and local organisation meant that inevitably a range of differing personnel with a range of policy and operational responsibilities participated. A comprehensive evaluation of participant recruitment, the development of research tools, limiters to the data and the iterative process of comparative analysis which was applied are detailed in the full report.

## **Focus of the Research**

The core areas of investigation included:

- Definitions of serious violent or sexual offenders
- The identification and assessment of serious violent or sexual offenders
- The exchange of criminality information on serious violent or sexual offenders travelling across EU borders
- The management, monitoring and information exchange on serious violent or sexual offenders
- Responding to information received on serious violent or sexual offenders travelling across EU borders

## **Definitions of Serious Violent or Sexual Offenders**

There is general consensus with the selected European Criminal Record Information System (ECRIS) offence codes utilised by SOMECS as a starting point to define serious violent or sexual offenders. This provides the basis of a common EU wide understanding of what constitutes a serious violent or sexual offender. However, offence categorisation is not enough in itself. Further robust processes of appropriate identification and assessment of serious harm are required to fully identify relevant serious violent or sexual offenders.

## **The Identification and Assessment of Serious Violent or Sexual Offenders**

The appropriate identification and assessment of serious violent or sexual offenders at a national level is a vital first step in ensuring that Member States are able to prioritise the need for information exchange across EU borders, should such an offender become mobile across the EU. A minority of Member States differentiate serious violent or sexual offenders as a specific category, and in most jurisdictions they are not treated as a distinct group. In those countries where differentiation occurs, the stages and processes for identification are

variable, with most EU Member States identifying such offenders at court, at the sentencing stage, and/or post-conviction.

Formal assessment tools are rarely used and the lack of communication and exchange of relevant data between the judiciary, police and offender management/probation personnel at a national level can further inhibit the accurate identification and assessment of those offenders posing the highest risk of serious violence or sexual harm. Convictions from other Member States also have yet to be fully embedded into a number of national legal frameworks and operational practices, despite the mandate of FD 2008/675/JHA.<sup>2</sup> Where overseas antecedents are available and considered by relevant authorities, the identification of serious violent or sexual offenders would be significantly improved.

There are other significant obstacles to developing a common operational approach to the identification and assessment of such offenders across the EU. These include varying legal frameworks and constraints within Member States and ethical and philosophical objections to the identification and assessment of this group as a specific category.

The identification and assessment of serious violent or sexual offenders can be improved by:

- The development of common EU wide standards for assessment, and a minimum standard of relevant information that should be used to identify such offenders.
- The development of protocols at Member State level for collaborative working between all relevant criminal justice personnel in order to improve the national identification and assessment of such offenders.
- Internal national databases to record such offenders and facilitate the efficient transfer of information where appropriate.
- Greater consistency in the exchange of conviction data via ECRIS and the use of convictions of convictions acquired in other Member States to appropriately assess and sentence such offenders.

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<sup>2</sup> Council Framework Decision 2008 675/JHA on the taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.

## **The exchange of criminality information on serious violent or sexual offenders travelling across EU borders, moving to a proactive/preventative approach**

The field work study examined the process and effectiveness of current methods for information exchange across the EU in a range of possible circumstances relating to serious violent or sexual offenders.

**Conviction data exchanges** – The EU community is moving towards a full adoption of the ECRIS system for the exchange of conviction data. The responsibility for such exchanges varies and can be held by law enforcement or judicial offices in different Member States. Ongoing dissemination and access to the information at a national level for the assessment or sentencing of offenders can be problematic. Despite the requirements of FD 2008 675/JHA which requires convictions acquired in other EU Member States to be taken into account in any further criminal proceedings, Member States continue to hold different perspectives and legal parameters for considering their relevance.

**Police intelligence data and information exchanges** – A range of existing mechanisms are currently used for information exchange for police intelligence and current investigation purposes. However levels of expertise and familiarity with the potential of the exchange tools available varies across the EU law enforcement community. A Single Point of Contact (SPOC) for all forms of criminality information exchange, where mechanisms such as Schengen SIS II, Interpol and Europol facilities and where bilateral or multi-lateral regional agreements may be managed has been presented as a model of good practice. Factors which are seen to limit the effectiveness of cross border law enforcement information exchanges include: the quality of the information provided, the timeliness of its receipt and differing perspectives of its importance or urgency.

**Proactive/Preventative Exchanges** – Whilst the principle of proactive/preventative exchange is broadly supported, in reality it is currently unlikely to occur for a large number of serious violent and sexual offenders. This is linked closely in some Member States to ethical arguments and penal codes that restore the full rights of liberty and privacy to a citizen following the completion of any formal sanction.

There is a clear lack of understanding of the permissive EU framework and supporting governance guidelines for current methods of proactive/preventative exchange. Proactive exchanges are already permitted on serious violent or sexual offenders who may no longer be subject to any formal sanction or supervision, but who are clearly identified and assessed to pose a serious risk of harm. However, the Swedish Framework Decision 2006/960/JHA principle of availability for EU law enforcement exchanges needs to be more strongly

embedded into legal frameworks in all Member States and communicated more effectively to front line practitioners.<sup>3</sup>

**Dedicated Alerts** – Various information exchange mechanisms might currently be used for a targeted dissemination of information to a particular Member State.<sup>4</sup> Some facility for a general alert also exists, where the destination of the mobile serious violent or sexual offender is unknown, including Interpol Green Notices and Schengen SIS II, subsection 2b of Article 36.<sup>5</sup> Establishing the threshold criteria for making a serious violent or sexual offender subject to an article 36 alert on a proactive/preventative exchange basis needs to be determined, albeit that several Member States are already clear that they can highlight serious violent or sexual offenders in this manner.

The exchange of information on serious violent or sexual offenders can be improved by:

- The development of a standardised package of information which meets an agreed quality threshold.
- The adoption by Member States of a proactive approach to conviction data exchange via ECRIS recognising the importance of convictions acquired in other Member States in accordance with FD 2008/675/JHA.
- A wider understanding and application of the permissive EU framework and supporting governance guidelines for current methods of proactive /preventative exchange, including the Swedish Framework Decision 2006/960/JHA principle of availability. Ascertaining the most appropriate channels for different types of proactive/preventative exchange, both where the destination of the offender is known and where a more general alert is required. Raising the profile of SOMEK issues within SIS II/SIRENE working groups, with SOMEK representations being included in the review of SIS II in 2015.
- Higher levels of knowledge and expertise across Law Enforcement and Offender Management personnel in the proactive use of all cross border information

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<sup>3</sup> The principle of availability under the Swedish Framework Decision 2006/960/JHA, sets timescales for information exchanges across EU borders and advises that communication should not be hampered by formal procedures, administrative structures and legal obstacles.

<sup>4</sup> For an overview of all existing information exchange mechanisms see *European Union Information Exchange Mechanisms A Mapping Report of existing frameworks*, accessed via: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563).

<sup>5</sup> Schengen SIS II sec 36b “Where an overall assessment of a person, in particular on the basis of past criminal offences, gives reason to suppose that that person will also commit serious criminal offences in the future, such as referred to in Article 2 (2) of the Framework Decision 2002/584/JHA”. Such alerts have the benefit of being directly accessible to front line law enforcement personnel with instructions as to what action should be taken under the provisions of a “specific check” or “discreet surveillance”. However, the full circumstances relating to the alert are only available via a request for supplementary information which is subsequently made to the relevant SIRENE Bureau.

exchange mechanisms to prevent future crime across the EU community, incorporating the SPOC model.

## **The Management, Monitoring and Information Exchange on serious violent or sexual offenders**

The field work data analysis examines existing arrangements for the management and monitoring of serious violent or sexual offenders at a national level by Member States. It also explores experiences of information exchange across the EU on such offenders who are mobile and subject to supervision, conditional release and deportation.

Some form of monitoring for serious violent or sexual offenders serving part of their sentence in the community is widespread and restrictions of various forms are common across the EU. The circumstances in which this occurs vary and often only apply to sexual offenders. Violent offenders appear to have less priority.

The differing availability and use of conditional release/conditional liberty for serious violent or sexual offenders is problematic. Extended monitoring arrangements are not common. Where they do exist, they include sex offender registration and notification systems, the use of civil orders and lifelong restrictions under public protection sentences. There are differing views over the ethical use and efficacy of foreign travel orders. Where they are available, arguably they have not been widely used and the challenging practicalities of their enforcement remain. The importance of inter-agency co-operation particularly between law enforcement and offender management/probation services at a national level is broadly recognised. However, in most Member States it is an area for development.

There is some appetite for frameworks to support more formal cross-border co-operation on monitoring and information exchange on those serious violent and sexual offenders subject to supervision or post custody licence, with some utilisation of Framework Decision 2008/947/JHA<sup>6</sup> for formal transfer of supervision arrangements. However, there are outstanding issues of implementation and the equivalence of sentences/sanctions across Member States, which if not addressed will result in FD 2008/947/JHA having limited impact.

Where a serious violent or sexual offender is being deported the type and route of information exchange varies, utilising Embassy personnel, Interpol, Europol, liaison officers, and notifications to national police. It is not clear how often receiving information on a

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<sup>6</sup> Council Framework Decision 2008 947/JHA On the application of mutual recognition judgements and probation decisions with a view to the supervision of probation measures and alternative sanctions

deportee is considered to be useful, or how often this is passed to regional police or offender management/probation services.

Significant barriers to effective information exchange across EU borders identified by offender management personnel included: differing languages and cultures; inadequate national information exchange procedures; cost and resource issues, a lack of trust; a lack of incentive for inter-agency work at national and EU levels, varying timescales for the retention of conviction data resulting in incomplete assessments. Judicial, offender management and law enforcement responsibilities are held differently across EU Member States which can also make it difficult to identify relevant counterpart personnel.

The management and monitoring of serious violent or sexual offenders moving across the EU community can be improved by:

- Agreement at an EU level regarding those serious violent or sexual offenders where information exchange and monitoring should take place beyond the completion of a formal sanction/sentence.<sup>7</sup> This is supported by a strengthened understanding of the permissive EU framework for proactive/preventative exchange such as the Swedish Framework Decision 2006/960/JHA.
- Increasing the appropriate use of conditional release for serious violent or sexual offenders and ensuring that appropriate conditions are set at court.
- Reviewing and strengthening the implementation arrangements for the transfer of supervision and FD 2008/947/JHA, including the development of a standardised package of information for use with serious violent or sexual offenders.
- Establishing a system of SPOCs which incorporate offender management expertise in working with serious violent or sexual offenders.
- Improving knowledge of deportation arrangements and utilising a standardised information package to be sent with deportees.

## **Responding to information received on serious violent or sexual offenders travelling across EU borders**

Effective responses to proactive/preventative exchanges of information can vary significantly. For many Member States the response is a reactionary stance where the information simply

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<sup>7</sup> This is challenging for most Member States, particularly those using Roman Law systems within which a public official is allowed to do only what is prescribed by law.

becomes intelligence data which is not acted upon until a further offence occurs. As such, the capacity for crime prevention is limited.

The quality and timeliness of the exchange are important factors in maximising the capacity of a receiving Member State to respond effectively. Issues were raised regarding the overloading of communication channels with inappropriate cases, with insufficient levels of information that cannot be acted upon or where the level of potential harm identified is not high enough to justify proactive/preventative actions. Information received should be proportionate to the risk, justified, and as comprehensive as possible to counter concerns over privacy rights, data protection, and resource constraints. The response to incoming information should be assessed on a case-by-case basis, by knowledgeable personnel, resulting in appropriate action to prevent the commission of a serious crime. Offender Management/Probation personnel highlighted the importance of incoming information being disseminated to other relevant agencies' promptly as appropriate.

Any information on ongoing travel should also be communicated and details of the harm posed by the offender forwarded promptly to any additional Member State partners as an offender's journey continues.

The response to incoming information on serious violent or sexual offenders can be improved by:

- The receipt of incoming information occurring via SPOCs with high levels of expertise and the effective coordination of the range of exchange mechanisms available.
- SPOCs actively assessing incoming information and ensuring its appropriate dissemination within the receiving Member State to law enforcement, judicial and offender management personnel.
- Member States reviewing their collaborative arrangements for actively managing serious violent or sexual offenders who are entering their country from other Member States.

## **SOMEK Project Recommendations**

Where public protection issues of significant scale and impact are apparent, such as in the case of terrorism threats, organised crime and human trafficking, proactive/preventative information exchanges are well established across the EU law enforcement community. The



single transient violent or sexual offender also clearly has a capacity to have a devastating impact and in some cases to proportions of a momentous scale.<sup>8</sup> The importance and legitimacy of improving information exchanges and the EU wide management of such offenders is therefore also of vital concern and needs to be viewed as a significant priority across all Member States.

The Swedish Framework Decision 2006/960/JHA, Council decision 2008/615/JHA and supplementary guidance for Interpol, Europol and Schengen Information exchange mechanisms and processes all highlight a facility for the exchange of information between Member States for the prevention of a serious criminal offence. The appropriate governance of such exchanges is of course vital to ensure that civil liberties, data protection and privacy rights are observed. However where assessments of risk are systematic, comprehensive and therefore defensible and the risk of harm to others is clear, the rights of all EU citizens to life and to remain free from torture, inhumane and degrading treatment<sup>9</sup> are also of paramount concern within every Member State and need to be protected. One person's rights should not become another person's risk.

There is no indication from the SOMEK research that yet another form of information exchange is required, but certainly there is scope and appetite for maximising the potential of existing tools to improve practice and cooperation in this area. In order to increase safety overall from serious violent or sexual offenders who are mobile across the EU, a number of changes need to happen at both an EU strategic level and also within the individual Member States. This will ensure that data from all relevant sources, across departmental boundaries and EU borders is utilised to identify and manage those offenders posing the most significant risk of harm to others.

The **Full List of SOMEK Recommendations** is contained in section 8 of the field work report. Whilst different combinations of the recommendations may address the various issues highlighted by the study, if improvements occur in isolation their impact is likely to have some profound limitations. Therefore it is emphasised that action needs to occur at a front line practitioner, national policy, regional and EU wide strategic level for comprehensive and effective developments to be achieved.

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<sup>8</sup> The case of "Robert M". Roberts Mīkelsons was born in Riga, Latvia. He became a naturalized Dutch citizen in 2008. He was previously convicted of possession of child pornography charges in Germany in 2003 whilst working at a day care facility for children. In 2010 he was arrested and then convicted in 2012 for offences of sexual abuse against 67 children as well as possession, production and distribution of child pornography. He actually admitted abusing 83 children whilst in his care at childcare facilities and as a private baby sitter in Amsterdam.

<sup>9</sup> Articles 2,3 European Convention on Human Rights



The movement of serious violent or sexual offenders is now established. Freedom of movement is a fundamental principle of the EU community. However with it comes the need for the acceptance of joint EU wide responsibility for the management of the small number of high-risk violent or sexual offenders who will take advantage of these liberties. The identification, tracking, monitoring and information exchange about serious violent or sexual offenders moving across the EU are important crime prevention and public protection measures. It is vital that they are done when required, justified and legitimate, and that they are pursued to the full extent permissible and expected under established EU arrangements.



## Glossary of Terms

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<b>Anglophone jurisdictions</b>	Jurisdictions within the English-speaking world (notably Australia, Canada, New Zealand, UK, USA). They derive much of their approach to criminal justice, and particularly to violent and sexual offenders, from the USA and the UK.
<b>Conditional Release</b>	Discharge from prison which is subject to some form of supervision, monitoring and/or restriction.
<b>EAW</b>	European Arrest Warrant
<b>ECRIS</b>	European Criminal Record Information System
<b>ENU</b>	Europol National Unit
<b>ISTEP</b>	Implementation of Support for the Transfer of Probation Sentences
<b>Modus Operandi</b>	Method of operation - pattern of behaviours relating to criminal activity
<b>Offender Management</b>	Broad term used by SOMECS to describe statutory services to offenders at court, on supervision, in custody and post custody. May include Prison Services, Probation Services, or similar statutory agencies.
<b>Proactive/ Preventative Exchanges</b>	Information exchanges where there may be no current conviction or pending investigation, justified by the clear identification of a high risk of serious harm to others and a high likelihood of further offending occurring.
<b>SIS II</b>	2 <sup>nd</sup> Generation Schengen Information System
<b>SPOC</b>	Single Point of Contact



## Section 1 - Introduction and Methodology

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SOMECE is a two year project running from January 2013 to January 2015 investigating current processes for information exchange and procedures to manage the harm posed by serious violent or sexual offenders travelling across the European Union. SOMECE is co-funded by the European Commission Directorate-General for Home Affairs - HOME/2011/AG/4000002521 30-CE-0519712/00-87.

### 1.1 Problem assessment and rationale for the study

There have been a number of tragic examples in recent years that have exposed weaknesses within the EU where a serious violent or sexual offender has travelled to one Member State from another without any public safety organisation within the receiving Member State being made aware of the harm they may pose.<sup>10</sup> It is often not until the individual carries out a criminal act and a check is made, that antecedents and an indication of the previously known concerns are revealed. Such offenders are able to integrate into communities across the EU free from any management, supervision or surveillance, which may lead to an increase in the risk to public safety.

Whilst issues of travelling violent offenders are less well documented, the mobility of sexual offenders has raised particular concerns, with some evidence indicating that sexual offenders migrate across borders to avoid registration and employment screening (Thomas 2011), and to gain access to children.<sup>11</sup> The UK Child Exploitation and Online Protection service (CEOP) for example has found that some 70% of high and very high risk sexual offenders travel abroad to offend against children. In the UK, Geden (2010) using Freedom of Information Requests has established that some 119 British nationals had approached Consulates due to being arrested in connection with child sexual offences.<sup>12</sup> Davies et al (2013) point out that despite a wealth of literature from the United Nations, individual countries, and non-Governmental Organisations such as CEOP, the secret nature of sexual offending, the under-reporting associated with it and variable detection and prosecution

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<sup>10</sup> For example, the case of the murder of Moira Jones by Marek Harcar in Glasgow 2008. Harcar was originally from Slovakia, where he had 13 previous convictions, 4 for violence. Scottish Police were unaware of his potential and he entered Scotland unmonitored. Also the case of Antonin Novak who was known in Slovakia for a history of serious sexual offending who moved to the Czech Republic and his history was unknown to them. He was subsequently convicted for sexually assaulting and murdering a 9-year-old boy.

<sup>11</sup> CEOP Strategic Overview 2009-2010, available at: [http://www.ceop.police.uk/Documents/Strategic\\_Overview\\_2009-10\\_\(Unclassified\).pdf](http://www.ceop.police.uk/Documents/Strategic_Overview_2009-10_(Unclassified).pdf); accessed October 15<sup>th</sup> 2014.

<sup>12</sup> This represents only those who had voluntarily approached consulates and the number could be higher, this also includes offences in some countries outside the EU and details of seriousness of offending is less clear; see also Bledsoe 2008.

practices mean that a reliable quantitative data base of sexual offending, particularly across the EU is difficult to establish (p. 6). However, the extent and seriousness is recognised (see for example United Nations Special Rapporteur report 2007), and a 2013 UN report that estimated an expansion in child 'sex tourism' with an anticipated rise to 1.8 billion 'tourists' by 2030.<sup>13</sup>

This report presents the results of a study on current issues in exchanging information on serious sexual or violent offenders who travel across EU Member States, and considers possible ways of improving systems for information exchange. This report comprises:

- A short introduction to the project's objectives.
- Details of the methodological approach including limitations and constraints.
- An overview of the data and results from the fieldwork interviews.
- Recommendations for improvements.

This report is supported by:

- A literature based report mapping existing EU information exchange mechanisms, and current issues and challenges presented by information exchange on serious mobile sexual and violent offenders, available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)
- A literature review of effective responses to sexual offenders available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)
- A short overview of 'what works' with violent offenders, available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)
- Guidance for law enforcement personnel and guidance for offender management personnel available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)

## 1.2 Objectives of the study

The SOMEK project has three main objectives:

- To assess the threat posed to European citizens when serious violent or sexual offenders travel between EU Member States.

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<sup>13</sup> See: <http://www.ohchr.org/EN/NewsEvents/Pages/ChildSexTourism.aspx>; accessed March 11<sup>th</sup> 2014.

- To identify the methods and effectiveness of mechanisms used by EU Member States in the management of serious violent or sexual offenders travelling across borders.
- To explore critical success factors and provide recommendations to facilitate the improved exchange of information for the prevention of crime.

Report 1 (available at [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)) seeks to address the first objective to assess the scale of harm posed to the EU community by serious violent or sexual offenders who travel across EU borders. It does so by presenting statistics on foreign EU nationals in the prisons of Member States. Quantification is difficult however due to the aforementioned covert nature of sexual offending, different offence patterns, detection and prosecution practices across the EU. Whilst it is recognised that the number of serious violent or sexual offenders (as identified by ECRIS offence codes) is likely to be relatively small, victimisation levels can be high (Davies et al 2013), with high levels of impact in terms of physical harm or severe psychological trauma. The Council of Europe has noted the lasting damage caused by sexual offending and that children in particular are entitled to special protection.<sup>14</sup> The results of violent offending can also have a very high impact for victims and their families as illustrated by a number of high profile cases.<sup>15</sup>

The field work data, analysis and recommendations presented in this report address the second and third objectives supported by the other documentation highlighted previously.

### 1.3 Defining serious sexual and violent offenders

At present there is no established EU wide definition of serious sexual or violent offenders. The starting point taken by the SOMEK project was the adoption of a selected number of current offence definitions/codes used by the European Criminal Records Information System (ECRIS). These were:

#### **Violent offences**

- Intentional killing
- Aggravated case of intentional killing
- Unintentional killing

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<sup>14</sup> *Reinforcing measures against sex offenders*, May 2010, Doc 12243, available at: <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileId=12426&Language=en>; accessed March 11<sup>th</sup> 2014.

<sup>15</sup> See footnote 1.

- Violence causing death
- Causing grievous bodily injury, disfigurement or permanent disability
- Torture

### **Sexual offences**

- Rape
- Aggravated rape other than a minor
- Sexual assault
- Rape of a minor
- Sexual assault of a minor

These are presented in full at **Appendix 1 - ECRIS selected list**.

## **1.4 Methodology**

### **1.4.1 Participants**

The data for this report was collected via the following methods:

- Thirty-Seven structured interviews with Law Enforcement (LE) personnel reflecting a range of operational and policy positions. Twenty-Three Member States participated with eleven received written responses.
- Twenty-Eight structured interviews with Offender Management (OM) personnel (also referred to as Probation personnel). Twenty Member States participated with twelve received written responses.
- Five Member States did not participate in the LE interviews, and eight in the OM interviews.
- These interviews were complemented by structured interviews with experts on key EU wide information exchange systems such as ECRIS, EUROPOL, Schengen SIS II; law enforcement officers in SIRENE Bureaux; Embassy Liaison Officers; specialist law enforcement officers on combating serious sexual and violent offending.



- Case studies were also collected to illustrate current practice,<sup>16</sup> and in one instance this was facilitated by a discussion group comprising LE and OM personnel from two Member States. The analysis is also supported by data from previous relevant projects such as DOMICE.<sup>17</sup>
- Key findings and possible recommendations were disseminated via three Task Groups hosted by SOMEK partner countries.<sup>18</sup> This enabled a limited participant check and validation of findings. These task groups were attended by seventeen Member States and largely comprised of those OM and LE personnel who had previously participated in the structured interviews with a total of thirty seven attendees overall.

## 1.5 Construction and content of the interviews

Whilst the study targeted lead law enforcement and offender management personnel in Member States, the difference in national structures and local organisation meant that inevitably a range of differing personnel with a range of policy and operational responsibilities were actually interviewed. Information provided to participants emphasised the requirement for respondents to check and reply on behalf of their Member State. However, it cannot be assumed that this has happened in every case. In some instances, interview responses are limited and may not fully represent the position of the home country. The interviews were conducted in English, and this again is limiting, with some terms lacking an easy local equivalence, and discussions were occasionally constrained by a lack of interpreters. Where possible case studies have also been sought and included to gain a realistic picture of information exchange and the management of serious violent or sexual offenders.

The interview schedules were developed after initial background interviews with subject experts, a literature review, and a pilot with country partners. Following further revision the interview schedules were finalised (see Appendix 2. for full schedules and participant information).

The Offender Management (OM) interviews focused on:

- How EU Member States identify and manage serious violent or sexual offenders;

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<sup>16</sup> The case studies are illustrative and demonstrate a range of current issues and responses, and where possible a range of positive crime prevention outcomes.

<sup>17</sup> For information on DOMICE see: [http://www.domice.org/default.asp?page\\_id=1](http://www.domice.org/default.asp?page_id=1); accessed May 21<sup>st</sup> 2014.

<sup>18</sup> These were held in Latvia, The Netherlands, and the UK.

- How EU Member States identify serious violent or sexual offenders who may travel to other EU Member States; and
- How EU Member States identify and manage other EU Nationals who have committed serious violent or sexual offences and who enter their country.

The Law Enforcement (LE) interviews focused on:

- How EU Member States identify and manage serious violent or sexual offenders.
- How EU Member States identify serious violent or sexual offenders who may travel to other EU Member States.
- What existing methods of information exchange are used to inform other EU Member States of serious violent or sexual offenders who may be entering their country?
- What EU Member States do with the information they receive from another EU Member States about serious violent or sexual offenders entering their country.

The recruitment of respondents was challenging, requiring persistent efforts to source suitable personnel from Member States. Respondents were provided with full project information and assured anonymity for themselves and their Member State. The position is also complicated by the range of information exchange mechanisms available, the range of specialist staff (particularly law enforcement) across Europe, and the differing national structures for cross-border information exchange and offender supervision.<sup>19</sup>

Other factors that may have influenced the information that respondents shared with the interviewer included the potential gap between management and frontline perspectives. There is potential for responses to reflect a particular role and responsibility in the relevant agency. In addition, the depth of the interview was at times influenced by the interviewer's background knowledge of the Member State and their working processes.

## 1.6 Data analysis

The data was initially collated and then subject to analysis through an iterative process against key comparative criteria (see below). The process followed key principles for analysing qualitative data derived from Denscombe (2010). All analysis was quality assured for accuracy and compared by at least two members of the research team to avoid bias and

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<sup>19</sup> See Chapter 3 of European Commission (EC) (2010) *Study on the status of information exchange amongst law enforcement authorities in the context of existing EU instruments*. International Centre for Migration Policy Development JLS/2009/ISEC/PR/001-F3.

subjectivity. Where possible responses were quantified to gain a view of levels of consensus across the Member States, and where possible responses were contextualised within the penal codes, practices, and legal systems of the Member State so that key differences can be better understood. Responses from offender management and law enforcement personnel were initially analysed by different members of the research team, with further cross analysis taking place to identify areas of overlap and contrast.

The difference in national structures of justice organisation, differing penal traditions, and differences in both probation and law enforcement models has restricted the comparability of data (see for example McAlinden 2012 on this difficulty). However, a comparative framework was developed for use at both interviewing and analysis stage. This is discussed below.

## **1.7 Development of a comparative framework**

### **1.7.1 Limits to a comparative approach**

Whilst the methodology and insights provided by comparative analysis in the justice field have improved over recent years (see Nelken 2010), a number of limits must be acknowledged. In brief, these are difficulties in obtaining comprehensive data, particularly through field interviews which can be constrained by linguistic, cultural and socio-legal differences particularly around key terminology. Examples in this study include ‘criminality information’, ‘intelligence’, ‘serious violent or sexual offender’; and differing perceptions and experiences of key processes such as assessment, interventions and treatment; supervision, monitoring, and prevention. Substantial differences in the definitions and categorisations of crime may also occur, making comparison difficult, hence the decision within this project to take the ECRIS codes as a starting point for defining offences relevant to SOMEK.

Discrete jurisdictions may also be subject to internal variation, with federal systems for example, or countries such as the UK which comprises three different jurisdictions and significant levels of devolution (i.e. England and Wales, Scotland, and Northern Ireland). Limited access and limited resources may also make it difficult to provide more than a description of differing approaches and responses with incomplete reference to the political, social and cultural context within which penal systems and justice systems have developed (Junger –Tas, Marshall, Enzmann, Killias, Majone and Gruszczynska (2010, Goldson and Hughes (2010)). Comparative analyses are also prone to the limits of ‘official discourse’, that its participants provide the official view of their criminal justice practice, with limited researcher access to operational practice (Goldson and Hughes 2010). There is also the risk of being ethnocentric, that is:

‘.. assuming that what we do, our way of thinking about and responding to crime, is universally shared or, at least, that it would be right for everyone else’ (Nelken (2009) p.293, Pakes (2004)).

Steps were taken to mitigate this by using the advice and expertise of country partners, and consulting a wide range of literature as evidenced in the supporting documents available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)).

### 1.7.2 Comparative framework for analysis

Based upon an extensive literature review of existing pan European information exchange systems, and drawing upon research regarding the implementation and operational use of such systems (see Report 2 Part 1 European Union Information Exchange Mechanisms. A Mapping Report of Existing Frameworks); and a review of effective practice with sexual or violent offenders (available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)) the following areas for comparison were identified for interviewing and analysis:

#### Law Enforcement comparative framework

- Definitions of serious violent or sexual offending.
- Methods for the identification and management of serious violent or sexual offenders.
- The exchange of conviction data.
- The exchange of intelligence data and information to assist in current criminal investigation/ proceedings.
- The proactive exchange of criminality information to prevent crime, but where the individual is not subject to any current sanction or proceedings.
- Responses to offenders travelling between EU Member States (including deportation).
- Main changes and improvements.

#### Offender Management comparative framework

- Definitions of serious violent or sexual offending.
- The identification of serious violent or sexual offenders.
- The assessment of serious violent or sexual offenders.

- Supervision and management of serious violent or sexual offenders, including conditional release.
- Responses to serious violent or sexual offenders travelling between EU Member States (including deportation).
- Main changes and improvements.

This framework enabled a consistent approach to the data, and a mechanism to identify similarities and differences across the Member States. In a very few instances a Member State is identified, for example where the provision discussed is a matter of public domain information or previous published evaluations.<sup>20</sup> Otherwise all references to Member States resulting from the data collection process are anonymised. However, where relevant, differences are contextualised with unspecified information about Member States, for example on penal traditions, approach to criminal justice and time of accession to EU.

## 1.8 Terminology

For the purposes of this report the following definitions of ‘criminality information’ are used:

**Conviction data** – formal records of current and previous convictions, for example as exchanged via ECRIS.

**Information and Intelligence** – Referring to Article 2(d)(i) of Council Framework Decision 2006/960/JHA (the Swedish Initiative), the International Centre for Migration Policy Development (2010 p16)<sup>21</sup> concluded that ‘information’ is defined as any type of information or data which is held by law enforcement authorities, whereas ‘intelligence’ is defined as information which has been evaluated and analysed and which has been identified as being of material value or potential material value, in an investigation for example. This can occur where there is a current formal sanction on a person which includes restrictive measures which have been breached resulting in legal enforcement proceedings and legal provisions for their apprehension and monitoring. Also where there is a current investigation involving a foreign EU national, at the pre-investigation stage or inquiry police officers in most Member States have the autonomy to exchange ‘intelligence’ aimed at establishing whether a crime has been committed. At the formal investigation stage evidence must meet the required national legal submission standards and is often subject to more formal procedures for

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<sup>20</sup> Where available these are directly referenced.

<sup>21</sup> See the European Commission (2010) Study on the Status of Information Exchange amongst law enforcement authorities in the context of existing EU instruments. International Centre for Migration Policy Development. JLS/2009/ISEC/PR/001-F3

exchange and in many Member States becomes the responsibility of the judicial or prosecutor's office.

**Proactive/preventative information exchange** – This pertains to information on offenders where there may be no current conviction or pending investigation, but rather a comprehensive understanding of a pattern of offending which poses a risk of serious harm to others, a high likelihood of further offending occurring, together with significant concerns regarding their mobility across the EU. The exchange therefore is seeking to prevent another serious crime occurring, rather than responding to one that already has.

SOMEK is primarily concerned with this third category: proactive/preventative information exchange, although the interviews and this report also consider conviction exchange, and information/intelligence exchanges.

In addition, Offender Management whilst a term mostly recognised in England and Wales, is the preferred term here to broadly describe statutory services to offenders at court, on supervision, in custody and post custody. In some, but not all Member States, statutory services are delivered by Prison Services, Probation Services, or similar statutory bodies (for example in the UK offenders in Scotland are supervised by Criminal Justice Social Workers).

## Section 2 - Definitions of Serious Violent or Sexual

### Offenders: What is the potential for a common EU wide definition of SOMEK type offenders?

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#### 2.1 Introduction

Establishing a common understanding of the SOMEK project concerns in terms of what constitutes the label of a “serious violent or sexual offender” was a vital area of investigation. The analysis of the definition of a serious violent or sexual offender presented here was drawn from interviews with respondents and written responses from personnel who had various law enforcement and offender management responsibilities and experiences as described previously in 1.4.1. The interviews took place between September 2013 and March 2014 for law enforcement and September 2013 and January 2014 for offender management.

#### 2.2 Agreement with selected ECRIS codes

Respondents were asked if they agreed with a selected list of the European Criminal Record Information System (ECRIS) codes. This list included serious violent offences (Intentional killing, Aggravated case of intentional killing, Unintentional killing, Violence causing death, Causing grievous bodily injury, disfigurement or permanent disability and Torture) and sexual offences (Rape, Aggravated rape other than a minor, Sexual assault, Rape of a minor and Sexual assault of a minor).

Of the thirty-seven law enforcement interviews reviewed, twenty respondents from eighteen Member States generally agreed that the list was adequate and consistent with those serious violent or sexual offences in their own countries.<sup>22</sup> One respondent indicated in his written response that although he agreed with the selected ECRIS codes, it was difficult to translate the offences into the national definitions of the offences. Similarly, another respondent also agreed with the selected ECRIS list but advised that there might be other offences that might not be included and judgement and discretion was required when aggravating features were subsequently discovered. One respondent thought that the selected ECRIS list was very

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<sup>22</sup> Note that in five interviews the question was not specifically addressed, in a further written response the respondent did not address the interview questions, resulting in 31 interviews/responses where it was addressed.

broad and its interpretation varied in different Member States as a result of the differences in national law.

Of the twenty-eight offender management interviews analysed, seventeen respondents from sixteen Member States also agreed with the selected ECRIS codes. They thought that the codes adequately fitted with the national understanding of serious violent or sexual offences in their own countries. However, one respondent disagreed stating in his written response that it was difficult to establish whether the selected list of ECRIS codes was adequate without having a full and clear description of these offences. Furthermore, the offences were considered too broad and susceptible to different interpretation across different Member States.

Whilst there is a general consensus about using the ECRIS offences to define serious violent or sexual offences, this consensus is more pronounced amongst law enforcement personnel than offender managers. The fit with existing national law and offence definition is a key issue, and to some extent definitions of serious violent or sexual offences will be framed by the interpretation of a Member State. However, the general level of consensus across both law enforcement and offender management personnel indicates that there is a general starting point for an EU wide definition of SOMEK type offenders.

## **2.3 Inclusion of offences to the ECRIS list (Law enforcement)**

Respondents were asked if they would add any other offences to the selected ECRIS list. Sixteen out of the thirty-seven law enforcement respondents representing fourteen Member States suggested the following offences (Respondents made more than one suggestion):

Sexual offences against children

- Child pornography (3)
- Child sexual abuse (2)
- Child pornography and internet images (2)
- Procuring underage prostitution (1)
- Recruitment of a minor for sexual purposes (1)
- Sexual corruption of a minor (1)
- Grooming – internet based offending (1)
- Prostitution of a minor (1)



### Sexual offences against adults

- Human trafficking (3)
- Sex tourism (1)
- 'Transnational' sexual offenders (1)
- Homosexual offences by force (1)
- Convincing a person to take part in prostitution offences (1)
- Creating and trading in pornography (1)
- Sexual Harassment (1) – no reference to children or adults
- Sexual exploitation (3) – no reference to children or adults

### Violent offences

- Kidnap offences (2); and specifically of children (1)
- Terrorism (2)
- Genocide (1)
- Armed Robbery (1)
- Robberies that result in death or murder (1)

### Other offences

- Organised crimes (1)
- Biker's phenomena (1)
- Public Order Sports Events (Hooliganism) (1)
- Crimes committed by mentally ill individuals (1)

One respondent suggested the inclusion of other 'qualified offences' but did not specify any details. Another respondent had nothing to add but discussed offences relating to manslaughter and accidental death offences. Of those who provided justifications for including certain offences, one respondent advocated the inclusion of human trafficking. It was considered a high priority in his country, and the Member State had increased its focus on child sexual abuse, 'sex tourism', and 'transnational sex offender' in response to increases in this criminality. Another respondent thought terrorism should be included, as his country and other Member States have experienced it in recent years. However, established

information exchange mechanisms exist for this and it is considered to be outside of the SOMEK project remit.

The additions listed above are in part reflective of the local policing concerns of responding Member States. For example, a Member State in the Scandinavian region has experienced significant issues policing biker gangs, and this is viewed as a significant problem for North West Europe with gangs beginning to move across these Member States. In total, and when taken with concerns over human trafficking, a total of four respondents from different Member States requested additions that can broadly be related to organised crime, reflecting to some extent greater experience and confidence in dealing with this type of cross border crime activity and reflecting current EU concerns.<sup>23</sup> However, these additions also highlight the difficulty in focusing attention on the individual transient serious violent or sexual offender.

Some of the additions under sexual offences against children and adults raise the issue of a threshold of seriousness, with one respondent arguing that where no consent is given or force is involved an offence should be considered serious. It is anticipated that not all of these additions would gain EU wide consensus and a number of additions might require significant debate and consideration. Offences of extreme violence are likely to secure a greater level of consensus based upon more easily measured levels of physical and psychological harm to victims.

## **2.4 Inclusion of offences to the ECRIS list (Offender management)**

Fourteen of the twenty eight offender management interviewees representing twelve Member States suggested the inclusion of other offences (Respondents made more than one suggestion).

Sexual offences against children

- Distribution of pornographic material relating to children (1)
- Online ordering of sexual abuse cases relating to children (1)
- Other grooming type offences (2)
- Abduction and procuring a minor (1)

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<sup>23</sup> See for example: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/trafficking-in-human-beings/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/trafficking-in-human-beings/index_en.htm); accessed April 3<sup>rd</sup> 2014.

- Incest offences (1)

#### Sexual offences against adults

- Accomplice to rape (1)
- Sexual exploitation offences (1)
- Stalking (2)
- Engaging in illegal sexual services against the person's wishes (3)
- Human Trafficking/Slavery offences (5)
- Gender based violence (1)

#### Violent offences

- Kidnapping (2)
- Terrorism (2)

#### Other offences

- Categories of serious organised crime (1)
- Military killings (1)
- State organised genocide (1)
- Unlawful deprivation of liberty (1)
- False imprisonment (2)
- Crimes against property where the elderly are targeted (1)
- Offences against public safety e.g. drug dealers, murder, child killers (1)

One respondent supported the inclusion of human trafficking commenting that offences of this nature were increasing in numbers. Another respondent advocated the inclusion of categories of organised crimes, citing an experience where a serious crime organisation member from another country appeared in a local village. Again these inclusions reflect national and at times local concerns. Whilst there is some overlap with law enforcement personnel, the additions above are also more extensive than those advocated by law enforcement personnel. There is no data to explain this difference, however, this may reflect the concerns of the respondents, their Member States, or reflect a different professional focus on the impact of serious offences, particularly in relation to sexual offending and child protection issues.

## 2.5 Exclusion of offences from the ECRIS list (Law enforcement)

A total of ten out of thirty-seven law enforcement respondents representing nine Member States argued that unintentional killing should be removed from defining SOMEK type offenders. Of the ten respondents, six provided the following reasons:

- It should be treated as negligence and not a criminal offence. (2)
- It is not recognised as an offence in respondent's home country. (1)
- It is not considered a serious offence, as it can be accidental and not deliberate. (1)
- It may encompass a range of offences which were not necessarily regarded as serious violent offences. Intention and motivation were seen as key areas to be explored further. (1)
- It is likely to include a range of inappropriate offences. (1)

One respondent thought that torture should be excluded. It was not considered an offence in the respondent's home country, as there is no separate law for torture. This example reflects the particularity of domestic Member States' legislative frameworks which can differ significantly from the pan European ECRIS codes.

## 2.6 Exclusion of offences from the ECRIS list (Offender Management)

A total of five out of twenty-eight offender management respondents representing three Member States thought unintentional killing should be excluded from defining SOMEK type offenders on the following grounds:

- It is not considered a serious violent or sexual crime in respondent's home Member State. (2)
- It covers a number of inappropriate lower risk offences. (1)
- It is regarded as a negligence crime. (2)

One respondent also questioned whether diminished responsibility as a result of mental ill health and unintentional killing such as dangerous driving should be part of the focus of the SOMEK project.

A total of fifteen law enforcement and offender management personnel from nine different Member States stated that they would wish to exclude unintentional killing from the definition of a serious violent or sexual offender. This again may reflect domestic perceptions and legal parameters in individual Member States, although it cannot necessarily be assumed that the view expressed is totally representative of the general policy of the Home Member State concerned.

## **2.7 Summary**

There is a general consensus with the selected ECRIS offence codes as a starting point to define serious violent or sexual offenders for the purposes of SOMEK, and arguably this provides the basis of a common understanding. There are some limitations presented by domestic law and perceptions in Member States but these are not significant across the respondents. Sixteen law enforcement and fourteen offender management respondents sought to make additions to the list, adding to the sexual offences committed against children, with a smaller number of additions to violent offences and with other inclusions relating related to localised crime issues, particularly organised crime. However, the research did not establish a consensus for such additions, and most were suggested by only one respondent. In addition, it is arguable that a number of desired additions are already included under the selected ECRIS list. For example, robberies resulting in death would be covered by 'violence causing death', and a number of the sexual offences particularly against children are also likely to be covered, or would be addressed within the remit of serious organised crime. Kidnap is potentially an important inclusion as it involves serious physical and psychological harm against the person.

It is anticipated that any 'net widening' of the definition beyond the core selected ECRIS codes would not necessarily achieve any greater consensus and may require considerable debate with differing perceptions of seriousness and harm influencing the views of Member States.

However, it can be concluded that the current selected ECRIS offence codes offer a generally acceptable starting point for defining serious violent or sexual offences and offenders. That said, task group debate of this finding noted that there may also be serious violent or sexual offenders who have not committed one of the selected ECRIS offences and yet, in view of their modus operandi and other information which may be available, are actually considered to present a very high level of harm to others. Equally, a view held by offender management personnel in the main, was that to take a rigid view of the commission of a specified index offence from the selected ECRIS list as the only method by which a SOMEK type offender was identified was also extremely problematic. Further contextual

information and an accurate current assessment was needed to indicate whether the potential harm was still apparent, had increased, or was in some cases now diminished. It should be stressed in any guidance therefore that further processes of appropriate identification and assessment of serious harm may override any initial categorisations prompted by a match with the selected ECRIS list. It is to the matter of identification and assessment that this report now turns.

## **Section 3 - The Identification and Assessment of serious violent or sexual offenders**

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### **3.1 Introduction**

The selected ECRIS codes discussed in Section 2 are an agreed starting point for determining who the most serious violent or sexual offenders are within every Home Member State. However, the further identification and assessment of the most serious violent or sexual offenders at a national, domestic level is critical to establishing those offenders who pose a significant level of risk and about whom information exchange across EU Member States is justified. In brief, if such offenders are not known domestically within a Member State in the first instance then information exchange across the EU if they become mobile can simply not take place.

Gaining an overview of the methods by which Member States currently identify and assess serious violent or sexual offenders was therefore central to understanding the potential challenges to effective information exchange across EU borders. This section focuses on the responses made by Law Enforcement and Offender Management personnel concerning internal domestic arrangements for the identification and assessment of serious violent or sexual offenders only. Current issues and challenges presented by EU wide information exchange is addressed in section 4 of this report. Here an analysis is provided of the varying stages and processes of identification, whether serious violent or sexual offenders are considered as a specific category within Member States, together with a brief overview of reported practice in assessment.

### **3.2 Law enforcement and the identification and assessment of serious violent or sexual offenders**

Three out of the thirty-seven law enforcement respondents indicated that violent and sexual offenders were viewed as specific categories in their home Member States. One out of the three respondents commented in a written response that a sex offender register was available at regional/capital city level in the home Member State. This respondent promoted the need for a countrywide procedure and a regulation/centralised register for serious violent or sexual offenders. Another respondent stated that there were internal/domestic arrangements available for the identification of violent and sexual offenders. However such systems were in the minority.

In contrast six out of the thirty seven respondents advised that violent and sexual offenders were not specifically identified and categorised in their home countries, although a number of Member States do identify the offences specifically, for example by longer or extended sentencing. A further one respondent was not able to confirm whether violent or sexual offenders were treated as a specific category or flagged in any way, as his division was not directly concerned with such offenders.

Seven respondents from six Member States stated that although they had no system of identifying violent or sexual offenders, they nevertheless thought that having a system or a register for this type of offender would be useful. Five respondents highlighted that steps were either already being taken nationally to consider a register, or that a register was considered to be a good idea. One respondent noted the positive exchange and communication between court, probation and police, and one noted the failure of local developments to operate a register, due a lack of national support.

Respondents were then asked how serious violent or sexual offenders were identified in their home countries.<sup>24</sup> Responses primarily focused on the use of conviction data and 'police intelligence' as the key identifiers, followed by the length of sentence imposed by the court as an indication of seriousness. Respondents also noted that offenders are identified by different agencies (e.g. probation), by different personnel, and at different stages in the criminal justice system. The following examples from respondents' replies illustrate the type and range of activities undertaken to identify serious violent or sexual offenders by law enforcement personnel across the EU:

- Offenders are identified during an investigation by the police. Strategies that law enforcement personnel stated they may use to assist in the identification and management of serious violent or sexual offenders during an investigation included:
  - The results of their own operational work (informants, operational control etc.).
  - Information exchanges with the police and justice authorities of other countries.
  - Information from families of the victims and victims themselves.
  - Information from the other legal authorities such as the Border Guard
  - Monitoring of the Internet.

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<sup>24</sup> Not all respondents were able to provide this information.



- There are national Police guidelines. All officers use national standards across the country. In sexual offences, there are specialised officers in this investigation area who also deal with very serious violent crimes.
- Sexual offenders can be found by the police through a national police data base.
- There is a sex offender list which is managed and administered by the police; all known sexual offenders in the member state are on this list. It proves to be useful in investigations to identify those persons.
- One respondent stated that there was no assessment system and law enforcement personnel do not have access to prison service reports or psychiatrist/psychologist assessments that may have been undertaken.

These responses present a variable picture on identification and assessment systems across the EU at law enforcement level. There is also a lack of data to indicate how robustly such systems are implemented within Member States, or how often these activities actually take place in respect of serious violent or sexual offenders. What the responses do indicate is that there is in effect no consistent method or system used by all Member States to identify this group of offenders. This diversity is itself a barrier to effective information exchange across EU borders. This information is also not always accessible to the different agencies within the criminal justice system in a single Member State. There are issues therefore not only in terms of a lack of consistency in identification and assessment, but also in the limited collaborative working and cross agency access to such data. In determining who the most serious violent or sexual offenders are nationally, two key questions should be addressed, the first being who/which agencies may assist in the identification and assessment process and the second being, once the offender is identified who else needs to know about them?

Respondents also advised that serious violent or sexual offenders are identified by court and legal processes: at the prosecution stage, at the point of conviction, if extended sentences are imposed, by formal penal code and offence definitions, through licence conditions, court orders for extended periods of monitoring (but generally limited to the length of any formal sanction/sentence), and by the use of sentencing guidelines or penal code charge definitions. Five law enforcement respondents stated that violent or sexual offenders are identified at the point of conviction or after.

Six respondents indicated that multi-agency procedures were in place in their home countries to identify violent or sexual offenders,<sup>25</sup> although these were limited to a very few Member States.<sup>26</sup> Two respondents stated that violent or sexual offenders were identified via other methods such as biometrics, DNA database and fingerprints. One respondent advised that the identification of violent or sexual offenders was the responsibility of the probation service.

### **3.3 Offender Management and the identification and assessment of serious violent or sexual offenders**

Seven out of the twenty-eight Offender Management respondents advised that violent or sexual offenders were specifically identified and categorised in their home countries; these represented the views of five different Member States. Predominantly this position related to one Member State and its constituent home countries. One further Member State used a specialist psychiatric clinic to assess mental competence and to provide compulsory psychiatric treatment to serious violent or sexual offenders if required. Another Member State advised that identification occurred at court, with the imposition of licence conditions. This Member State is also considering the development of legislation for additional preventative measures.

In contrast, fifteen out of the twenty-eight respondents revealed that offenders were not specifically categorised as violent or sexual offenders in their home Member States, with no specific categorisation within their jurisdiction. Some of the reasons cited for this were that the numbers of such offenders were very small, thus there were no specific procedures, policies, sentences, interventions or management approaches. One Member State stated that there were approximately twenty cases fitting the SOMEK definition nationally at any one time.

Similar to the law enforcement respondents, offender management respondents advised that violent or sexual offenders in their home Member States were identified via different routes and government bodies. Not all respondents were able to provide information. Of those who responded, six representing five Member States, commented that offenders were initially identified by the police and their index offences.

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<sup>25</sup> These included: the Multi Agency Public Protection Arrangements (MAPPA) in England and Wales, the Public Protection Arrangements Northern Ireland (PPANI), similar arrangements in Scotland, developing arrangements in the Republic of Ireland; supported by the use of multi-agency arrangements for case management, and formal risk assessment.

<sup>26</sup> The law enforcement role was most often linked to investigation and arrest, or to action on breach if required. This may have impacted on the responses concerning multi-agency working, and it is possible that this is more extensive across Member States and simply was not reported on by the respondents accessed.

The majority of respondents (Nineteen out of twenty eight) indicated that identification takes place at court, often as part of the sentencing process, or post-conviction, and can involve decisions by judges or magistrates, and in some cases involves prosecutors. Four respondents commented that identification and assessment would only take place post-conviction. Whereas four other respondents commented that the offender would be assessed at different relevant stages of the criminal justice process, for example in pre-sentence reports, at the start of a community or custodial sanction, at review periods and prior to release from custody. For four respondents the identification of violent or sexual offenders was primarily the responsibility of probation/offender management personnel, although mental health reports could be requested in some cases to assist and some probation staff worked in the context of multi-agency risk assessment and information gathering processes.

These differences also reflect the diverse forms of probation services and functions across the EU. For example, some are court based, with a tight focus on assessment whilst others are post custody welfare and resettlement services with a limited role in offender assessment. The Anglophone<sup>27</sup> probation services also tend to have a greater focus on public protection and risk assessment (Kemshall 2008),<sup>28</sup> with other probation services in the EU retaining a more traditional rehabilitative focus (van Kalmthout and Durnescu).<sup>29</sup> In addition, many recently acceded Member States are in the process of developing probation services and their systems are in the early stages, often influenced by 'partnerships' and 'exchanges' with other EU Member States where the Probation function has a longer history.

As with law enforcement responses, illustrations of multi-agency working developments were limited. Three respondents from the same Member State provided detail of formal multi-agency arrangements for the identification and assessment of serious violent or sexual offenders. Three other Member States mentioned other methods of identification, specifically: by imposing explicit legislation-intended in particular for sexual offenders; prison assessments which occurred once a sentence had commenced and via specific referral into multi-agency public protection arrangements.

Methods for assessing serious violent or sexual offenders also varied. Not all respondents were able to describe assessment methods or procedures for these type of offenders. Six out of the eighteen Member States who answered this question reported that they used some

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<sup>27</sup> Anglophone jurisdictions: these are jurisdictions within the English-speaking world (notably Australia, Canada, New Zealand, UK, USA). They derive much of their approach to criminal justice, and particularly to violent and sexual offenders, from the USA and the UK.

<sup>28</sup> Kemshall, H. (2008) *Understanding the Community Management of High Risk Offenders*.

<sup>29</sup> Van Kalmthout, A. M. and Durnescu, I. (undated) *European Probation Systems: A comparative overview*. Available at: [http://www.cepprobation.org/uploaded\\_files/0\\_Preliminary\\_pages\\_Index\(1\).pdf](http://www.cepprobation.org/uploaded_files/0_Preliminary_pages_Index(1).pdf); accessed June 3<sup>rd</sup> 2014.

form of structured assessment. Three of these Member States made direct reference to their assessment tool being derived from the Offender Assessment System (OASys) as used in England and Wales. A further Member State outlined plans to introduce the Level of Service Case Management Inventory (LSCMI), a variant of the Canadian LSIR. It was advised this was to be adopted by the Member State in 2016, but will only be used for case management purposes and not prior to sentence.<sup>30</sup> A further two Member States reported using structured assessment processes but without the use of formalised assessment tool or checklist. Another two Member States described comprehensive prison based assessment systems, in one instance linked to a strong focus on treatment and a rehabilitative approach and in the other used to inform community supervision.

**Example 1:**

Serious violent or sexual offenders who are sentenced to four years or more undergo an in depth assessment at the start of their sentence in a specialist prison unit. These assessments inform educational and treatment programmes whilst in custody. This unit routinely acquires information about foreign EU national prisoners and uses Interpol channels to exchange information.

**Example 2:**

Serious violent or sexual offenders undergo in depth prison assessment involving a number of different professionals including psychologists, psychiatrists, and social workers. This assessment informs the timelines for the sentence and includes psychological testing, structured interviews and tests for psychopathy. This assessment informs selection and use of educational and treatment programmes in prison, and the choice of programmes and conditions for conditional release.

Task group debate on this finding also explored the varied national status of Probation and Offender Management Services and the perceived benefits and willingness of law enforcement, judicial and probation organisations to work together in a more collaborative manner. This was a partnership strategy which had yet to be universally recognised as having significant value across all Member States. However its development was seen as vital to facilitate effective information sharing to identify, assess and manage serious violent or sexual offenders at a national level. Indeed, whilst some task group participants still

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<sup>30</sup> A number of structured assessment tools have been developed in Canada, the USA, and the UK. It cannot be assumed that they will necessarily transfer to other jurisdictions or offender populations, and it is essential that any transfer of use is done based upon further evaluation and validation against the population concerned, and with full awareness of the limits of the tools adopted.

primarily viewed the exchange of information across the EU to be a law enforcement responsibility, there was some increasing recognition that inter-agency cooperation at a national level was required in order to be ready to exchange.

It was also stressed, again primarily by offender management personnel, that any assessment which leads to the application of a “label” and the categorisation of a serious violent or sexual offender, also needs to be subject to routine possibilities of review and de-categorisation. Ensuring this occurs once the information has been shared and stored across EU borders presents further challenges. However, as discussed in section 4, it is important to note that all existing mechanisms of cross border exchange are bound by clear processes of governance, complying with EU data protection standards and inspection. However it is clear to see why actions which some participants viewed as preventative public protection measures, were viewed by others as a potential violation of privacy and basic human rights. In this context, agreed standards of identification and assessment are critical, but achieving them is challenging.

### **3.4 Summary**

A minority of Member States identify serious violent or sexual offenders as a specific category and in most jurisdictions they are not treated as a distinct group. Law enforcement personnel tend to identify such offenders by their index offence at the investigation stage or during court proceedings. Databases are used largely to record index offence details. Responses from Offender Management personnel presented a more diverse picture, with most EU Member States identifying serious violent or sexual offenders at the sentencing stage at court and/or post-conviction. The use of assessment tools, structures and systems is variable. Task group discussions highlighted the need for effective collaboration and information sharing between relevant criminal justice agencies at a national level to ensure that assessments on serious violent or sexual offenders are fully comprehensive. This national level of cooperation has yet to be established in many Member States.

These differences appear to be rooted in the national delineation of judicial, offender management and law enforcement responsibilities, penal codes, offence definitions, and sentencing patterns of the Home Member State. The diversity and in some Member States non-existence of systems to identify, categorise and assess serious violent or sexual offenders is a challenge to effective proactive communication with other EU Member States about such offenders if they then become mobile across the EU community. Simply put, if a Member State does not identify such offenders it cannot alert other states to their actual or potential risk of harm to others.

This issue could be addressed in the first instance by Member States taking steps to identify and assess this group of offenders and flagging them on their internal central database. The selected ECRIS offence codes presented in section 2 are recognised as a reasonable starting point. This would have to be supported by a commitment to the 'principle of availability' (The Swedish Framework decision 2006/960/JHA)<sup>31</sup>, and the use of appropriate mechanisms to share such information EU wide.

However, there are significant obstacles to developing a common operational approach to the identification and assessment of serious violent or sexual offenders and in particular for the subsequent purpose, where relevant, of EU wide information exchanges. In brief, these are:

- Legal frameworks and constraints within Member States.
- Ethical and philosophical objections to identification and assessment of this group as a specific category.
- Objections to preventative measures of offender surveillance and management.
- Resource limitations-particularly for those Member States who do not consider that they have a high transient population and/or where the internal national number of serious violent or sexual offenders is low.

More recently acceded countries are rapidly developing their offender management/probation services, often under the influence of those more well-established in other parts of the EU, with an emphasis on public protection priorities and evidence based risk assessment tools.<sup>32</sup> In some Member States, however assessment is viewed as a matter of professional judgment for the individual assessor only and issues of offender rehabilitation and treatment prevail. In others there remains an almost exclusive focus on welfare issues.

### **3.5 Moving forward in the identification and assessment of serious violent or sexual offenders**

Work on developing EU wide standards for the assessment of the most serious violent or sexual offender has occurred elsewhere. Recommendation CM/REC (2014) 3 of the

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<sup>31</sup> Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union. The principle of availability under the Swedish Framework Decision 2006/960/JHA, sets timescales for information exchanges across EU borders and advises that communication should not be hampered by formal procedures, administrative structures and legal obstacle.

<sup>32</sup> For example the UK National MAPPA team has assisted Latvia with the development of multi-agency public protection systems for the assessment and management of high risk offenders.

Committee of Members to Member States concerning dangerous offenders<sup>33</sup> offers a standard for the risk assessment of 'dangerous offenders' which could be adopted for SOMEK offenders. In brief, the standard is that assessment '*should be conducted in an evidence-based, structured manner, incorporating appropriate validated tools and professional decision making*', and such assessments should make clear any limits to the assessment and to any predictions about future behaviour (para 28). Further, it sets out principles for the assessment of dangerous offenders<sup>34</sup> which could apply to SOMEK offenders who fit within the general description and criteria offered by the recommendation. This would provide Member States a minimum standard for the identification and assessment of serious violent or sexual offenders, and offer a degree of consistency across the EU in various areas of offender management practice.<sup>35</sup>

It is important to note that recommendation CM/REC (2014) 3 does not refer with any significance to responsibilities post release from custody and is quite limited in relation to its discussion of collaborative, multi-agency work. Its original remit in determining the treatment and management of 'dangerous' offenders subject to periods of preventative detention may also not register significantly with law enforcement personnel and these factors will need to be deliberated when considering its transferability to the SOMEK project remit.

Issues relating to the incoherent picture of conditional release for serious violent or sexual offenders, the transfer of supervision, deportation, monitoring and management of such offenders are examined in section 5 of this report. However, having established the varied pattern of identification and assessment of serious violent or sexual offenders across the EU, the following section 4 explores the extent and practice of current criminality information exchanges between Member States when such offenders are moving across EU borders.

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<sup>33</sup> Adapted by the Committee of Ministers 19 February 2014 at the 1192<sup>nd</sup> meeting of Ministers' Deputies, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2163607&Site=CM>; accessed June 3<sup>rd</sup> 2014; see also explanatory memorandum CM (2014) 14, add1, 1192 meeting 19-21 February 2014 available at: [http://www.coe.int/t/DGHL/STANDARDSETTING/CDPC/Bureau%20documents/CM\(2014\)14%20add1.pdf](http://www.coe.int/t/DGHL/STANDARDSETTING/CDPC/Bureau%20documents/CM(2014)14%20add1.pdf); accessed June 3<sup>rd</sup> 2014.

<sup>34</sup> The Recommendation is a 'guide for both legislation and a framework for good practice concerning dangerous offenders and it is for Council of Europe Member States to accommodate these rules into their legislation and to translate them into practice' (para 34) explanatory memorandum CM (2014) 14, add1, 1192 meeting 19-21 February 2014 available at: [http://www.coe.int/t/DGHL/STANDARDSETTING/CDPC/Bureau%20documents/CM\(2014\)14%20add1.pdf](http://www.coe.int/t/DGHL/STANDARDSETTING/CDPC/Bureau%20documents/CM(2014)14%20add1.pdf); accessed June 3<sup>rd</sup> 2014.

<sup>35</sup> Guidance is also provided for Law Enforcement and Offender Management personnel at: [http://www.somec-project.eu/default.asp?page\\_id=577&name=Practitioners Guidance](http://www.somec-project.eu/default.asp?page_id=577&name=Practitioners%20Guidance).





## Section 4 - The exchange of criminality information on serious violent or sexual offenders travelling across EU borders. Moving to a proactive/preventative approach

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### 4.1 Introduction

The Hague Programme<sup>36</sup> sought to maximise cooperation between Member States to achieve optimum levels of protection in the areas of freedom, security and justice. Within this, the Principle of Availability implemented by the Swedish Framework Decision 2006/960/JHA sought to simplify the exchange of information and intelligence between law enforcement agencies across the EU community.<sup>37</sup> In this context, this section of the field work analysis is concerned with the primary methods by which conviction data, police intelligence exchanges and proactive/preventative exchanges<sup>38</sup> are currently made between Member States on serious violent or sexual offenders.

This section starts with a consideration of conviction data exchanges and exchanges of police intelligence information where there is a current investigation and/or criminal proceedings. This focus is significant as there are clear stages in law enforcement practice and judicial proceedings where the exchange of information across EU borders is now far more regular and far less contentious in terms of it being perceived as an acceptable policing/judicial function. Indeed the requirement to notify a Home Member State of any conviction which has been secured in another Member State is now mandatory and has met with little, if any ethical opposition.<sup>39</sup> That said, it is important for SOMEK project purposes to consider the effectiveness and efficiency of these types of information exchange and areas

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<sup>36</sup> Communication from the Commission to the Council and the European Parliament of 10 May 2005 – The Hague Programme: ten priorities for the next five years. The Partnership for European renewal in the field of Freedom, Security and Justice [COM(2005) 184 final – Official Journal C 236 of 24.9.2005]. Includes “Striking the balance between privacy and security when sharing information, an integrated management of external borders, sharing responsibility and solidarity across the EU”, with particular attention being given to issues of discrimination and oppression, Xenophobia, children’s rights and ending violence against women

<sup>37</sup> The principle of availability under the Swedish Framework Decision 2006/960/JHA, sets timescales for information exchanges across EU borders and advises that communication should not be hampered by formal procedures, administrative structures and legal obstacle.

<sup>38</sup> See Glossary and introduction for a reminder of full definitions of different criminality information, conviction data, intelligence data for investigatory purposes and current criminal proceedings and proactive/preventative exchanges where there may be no current penal sanction or criminal proceeding, but a high likelihood and high level of potential harm to the public has been identified

<sup>39</sup> See Mapping Report on Existing EU Information Exchange Mechanisms section 3.6 available at: [http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563).

for development and improvement. Any residual difficulties inherent in the more common forms of information exchange discussed initially here, if left unaddressed, are likely to impact upon any move to a more widespread adoption of proactive/preventative exchanges of information on serious violent or sexual offenders. The efficient collection, transmission and recording of conviction data pertaining to offences that any one individual may have committed in a number of other Member States is also essential. Only then can a truly comprehensive assessment of the potential harm posed by the offender be made (see section 3 on the identification and assessment of serious violent or sexual offenders).

The observations made in this section are drawn primarily from the thirty seven law enforcement interviews which occurred, representing a total of twenty three Member States. Whilst one law enforcement respondent only answered questions pertaining to ECRIS, their response remains pertinent here.

However, the accessibility of criminality information and conviction data is also clearly a matter for sentencing courts and offender management personnel who engage in offender assessments at pre-conviction, pre-sentence or post-sentence stages. Therefore additional observations have been sourced from the twenty eight interviews undertaken with offender management personnel, representing twenty of the Member States. Relevant findings and comments from the task group events are also incorporated where appropriate. The commentary highlights the different sources for the analysis as described.

## 4.2 Conviction Data Exchanges via ECRIS

It is now mandatory to exchange conviction data, as determined by the completion of prosecution and judicial processes, acquired by foreign EU nationals in other Member States. Member States are required to notify the Home Member State at the point of conviction- now through the European Criminal Record Information System (ECRIS) as stipulated by the Framework Decision 2009/315/JHA. This should occur within ten working days of the conviction having been administered (FD 2009/315/JHA and FD 2009/316 JHA).<sup>40</sup> The Home Member State is the central coordinator for conviction data records pertaining to their own national citizens. Requests for conviction data can also be made to the Home Member State through ECRIS at other stages of criminal proceedings and for other purposes such as employment checks, in accordance with national laws. However, the system appears under used in this respect.

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<sup>40</sup> General principles governing the exchange of information and the functioning of the ECRIS system are provided by the EU Council Framework Decision 2009/316/JHA. Article 8 of the 2009/316 JHA clarifies the timescales for responding to requests, which in all cases should be prompt and in any case no longer than ten days.

Twenty-six of the law enforcement respondents representing seventeen Member States stated that they were aware of ECRIS as the main form of exchange for conviction data. Three respondents commented on the statutory requirement for this to occur immediately following the formal conviction of a foreign EU national in their Home Member State, once it was clear that there were no further formal processes of appeal to be pursued. Out of the twenty-six respondents, twenty-three (from sixteen Member States) commented that notifications via ECRIS were not a police responsibility and that this was managed by judicial offices. In the majority of these Member States, law enforcement personnel would also have to apply formally to these judicial offices in order to access formal records of convictions held by national citizens. Only three respondents, from three different Member States, advised that the body for managing criminal records was part of the national police/ law enforcement structures.<sup>41</sup>

A further ten respondents, representing nine Member States, were unsure as to whether or not ECRIS was being used by their Home Member State, as their own professional role did not lead them to become directly involved in this form of exchange. For four of these nine Member States contradictory evidence was available from another law enforcement respondent from the same country who advised that ECRIS had indeed been implemented. Overall out of the twenty three Member States represented, there was no information about the status of ECRIS in five Member States.

#### **4.2.1 Notifications to Home Member States via ECRIS of convictions acquired in another EU Member State**

All Member States were required to comply with the framework decisions 2009/315 JHA and 2009/316 JHA by 2010 and report on the implementation of ECRIS by August 2011. It has been operating in its electronic format since April 2012. The interview data highlighted that law enforcement representatives from seventeen Member States believed that ECRIS was indeed now operational in their country, yet comments were made by five respondents in interview about their experiences or knowledge of practice in other Member States which suggested the overall picture of implementation was far more incomplete.

Four respondents commented on the limited number of other Member States who were operating the electronic version of ECRIS. Two stated that paper transfers were still occurring in a number of cases and that where ECRIS had not yet been implemented at all

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<sup>41</sup> Every Member State has a central authority responsible for the management of national criminal records and ECRIS transmissions. The General Secretariat of the EU ensures the distribution of this contact information across the EU community. However the central authority's responsibilities for ECRIS are housed within varied law enforcement and judicial departments across the Member States.

by a Member State, the exchange of conviction data still occurred but via article 22 of the European Convention on Mutual Assistance in Criminal Matters.<sup>42</sup> One respondent observed that sixteen Member States were now using ECRIS to exchange conviction data, whilst another thought it was only twelve. One respondent advised that if a Member State was not yet using ECRIS then Interpol dissemination channels might be used to exchange conviction data. This confused picture suggests that knowledge of the ECRIS facility, its uses and potential benefits does not extend widely beyond those responsible for the maintenance of central national criminal records in each Member State.

In relation to the quality and timeliness of exchanges made via ECRIS, one respondent stated that notifications of convictions acquired by EU foreign nationals were being sent by the judicial department in their Home Member State as a 'group collection' on a biannual basis rather than at the point of conviction for each individual. This resulted in significant delays in national criminal records being updated. Two respondents observed that there were varying national timescales across the EU for retaining conviction data. Also, that there were significant variations in how long a time period was required before offences would be removed from a formal record. It was thought that this could result in an incomplete overview of an offender's criminal history, with difficulties in identifying patterns of offending and incomplete assessments of an individual's likelihood of causing further serious harm.

Two respondents stated that the electronic ECRIS system was a positive development and had greatly speeded up the process of conviction data exchange between Member States where it was in operation. It should not be assumed that the lack of any more general enthusiasm for the introduction of ECRIS is indicative of any particular operational issues of the system itself. Due to the varied roles and responsibilities of the law enforcement respondents who participated in SOMECS and the fact that ECRIS is managed in many Member States by judicial offices, it may simply be due to a lack of law enforcement experience in this area.

The following case study was provided as a good example of the benefits of ensuring that convictions secured by an individual in other parts of the EU community are communicated and centrally maintained by each Member State.

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<sup>42</sup> Article 22 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (Strasbourg).

**Case study: Benefits of Conviction data exchange**

“P”, a national from Member State H, was arrested for an assault on his partner. Following information provided by the victim, police officers submitted a request for his foreign conviction history in Member State G. This request returned details of a murder conviction with a five year custodial sentence.

Further information requests to Member State G, revealed that this was an “honour killing” involving “P”, his two brothers and cousin, who were also nationals from Member State H. This initiated further requests to Member State G for the foreign conviction history of the other three individuals. Member State H was then able to update the national criminal records for all of the four perpetrators with charges of murder and assisting in a murder, with one acquittal.

The information on these convictions had not been routinely exchanged as required under ECRIS by Member State G back to the Home Member State of H, and an investigation of “P”’s criminal history was instigated by information provided by his partner on this occasion. The case study demonstrates the importance of acquiring such information and the need to ensure that this happens promptly and routinely via ECRIS, rather than as in this case, being discovered by chance. Two of the subjects did not have a national criminal record prior to the foreign convictions coming to the Home Member State’s attention.

The conviction history enables law enforcement and offender management personnel to be aware of the risk posed by the individuals in any future contact with them. The conviction history may also influence court decision making.

In this particular case “P” had an established pattern of violence related to his domestic relationships. He was remanded into custody for the new offence of assault and upon conviction made subject to a term of imprisonment.

The case study also links to different comments made in the research interviews about the level of information which can be exchanged via ECRIS. Four law enforcement respondents advised that exchanges via ECRIS can include a comprehensive package of information if this was seen to be proportional and relevant to the request being made. This could include information such as modus operandi and details of victim targeting.<sup>43</sup> This was viewed as

<sup>43</sup> Although supplementary information codes are also provided as part of the ECRIS framework which highlight the level of participation in the offence and issues of criminal culpability, such as diminished responsibility and insanity (Article 4 of the

being extremely valuable in terms of updating knowledge of the harm posed by the individual and planning how best to respond to any future agency engagement with them. But for the majority of respondents, with ECRIS being seen primarily as a judicial office function, it was thought that just the basic details of index offences and sentences imposed would be provided. The need to acquire details of a suspect's previous convictions from other Member States was also not viewed as a routine task in all cases. Three respondents thought its necessity was a matter to be determined by an investigating officer and that a more routine approach would have resource implications which it might not be possible to meet.

#### 4.2.2 Taking foreign EU convictions into account in new criminal proceedings

Sixteen law enforcement respondents commented on the importance of acquiring information both on a home national's offending in another Member State and the history of a foreign EU national who is being investigated for a crime, noting the benefits of having as comprehensive a picture as possible of a serious violent or sexual offender's pattern of offending. Two respondents clarified that convictions committed by home nationals in other Member States would be taken into account, where relevant, in any further criminal proceedings against the individual back in their own country. However two other respondents both from the same Member State advised that national legislation did not allow for convictions from other Member States to be included on a national citizen's criminal record. Two task group participants also highlighted that courts in some Member States would not yet take convictions secured in other EU countries into consideration, with one other Member State highlighting that legal reforms meant that this was about change.

The adoption of the Council Framework Decision 2008/675/JHA<sup>44</sup> appears to be fragmented in this respect. This framework decision stipulates that courts should take into account convictions secured in other Member States in the course of any new criminal proceedings and indeed supports the introduction of the mandatory exchange requirements under ECRIS. The new sentencing court cannot revoke or interfere with any earlier sanctions but should take previous convictions into account in the procedures for determining:

- Provisional detention (bail)
- The definition of the offence

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Council decision 2009/316 JHA on the Establishment of ECRIS), ECRIS primarily deals with historical, factual information and appears to have been met with little opposition to its implementation.

<sup>44</sup> Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of conviction in the Member States of the European in the course of new criminal proceedings.

- The type and level of sentence
- The execution of the sentencing decision

The framework decision also highlights the importance of obtaining such information to appropriately assess the offender's criminal history. The full implementation of this framework decision is vital for the effective assessment and management of serious violent or sexual offenders.

#### **4.2.3 Offender Management access to conviction data**

Once conviction data was received from another Member State, its further dissemination at a national level was also seen to be problematic by several respondents and task group participants. Comments were made about the lack of cooperation between judicial and law enforcement agencies by three law enforcement respondents and this was a recurring theme of task group discussions. Relevant criminality information held by other national agencies was often considered to be difficult to obtain at a national level. Unless the significance of incoming conviction data notifications received via ECRIS are fully considered and the details disseminated where appropriate, the danger is that ECRIS becomes primarily an administrative process, which was how it was described by one respondent, rather than an effective tool for addressing and managing criminal behaviour.

Twenty-seven offender management personnel from nineteen Member States commented on the extent of their awareness of different mechanisms for the exchange of criminality information and conviction data across the EU. Twelve offender management respondents from twelve Member States stated that they had some positive experiences of obtaining previous conviction information on EU citizens from other Member States, or offences committed across the EU by their home nationals. All twelve thought this had occurred via the ECRIS system, however many were not familiar with the details of the process involved. Offender management personnel did not have any direct access route to ECRIS information and all relied upon it being provided by the relevant judicial/law enforcement agency within their Home Member State. One respondent stated that this only occurred following a formal request at a national level to acquire it post sentence from judicial or law enforcement authorities.

At the task group events, offender management personnel generally lacked any direct experience of EU cross border conviction data exchanges. Some thought their lack of experience of such communication was as a result of there being little transient activity by offenders, leaving and arriving in the Member State concerned, so the need to acquire conviction data from other Member States was not a common occurrence. Others thought



that ECRIS was perhaps working well in terms of the information being sent to their Home Member State in the first instance and being received by law enforcement personnel. The key issue was that the information was then rarely disseminated any further at a national level and offender management personnel were often not party to the details that law enforcement agencies may have acquired.

Ten offender management respondents from eight different Member States advised that there was no routine system for acquiring previous convictions on foreign EU nationals who had committed crimes in their Home Member State. Interestingly, two of these respondents were from Member States where other colleagues from the same country, but in more senior policy roles had advised that EU conviction data was received and made available to offender management personnel. However, the two respondents who worked in front line practitioner roles had no direct experience of this occurring, or indeed any knowledge of how it might be facilitated.

One offender management respondent thought that EU foreign convictions were transmitted via other dissemination channels available via Interpol and Europol. Two respondents had experiences of previous convictions on foreign EU nationals being made available where a further new index offence was of a serious violent or sexual nature, rather than as a matter of routine for all foreign EU nationals. The new serious violent or sexual index offence resulted in the offender becoming subject to further monitoring and scrutiny under public protection and crime prevention frameworks which were applied in their Member State, resulting in requests for full conviction data disclosures being made to their Home Member State. One respondent described good relationships and exchanges of conviction data with neighbouring Member States, but thought that the exchange and receipt of conviction data across the wider EU was not as effective.

The necessity for a more routine approach to the acquirement of previous conviction data on all EU citizens appearing in courts in other EU Member States was clearly highlighted in a case study example from one of the offender management respondents.



**Case study: The possible consequences of a lack of EU conviction data**

An example was provided of a foreign EU National appearing in court for a relatively minor offence, which was deemed by the sentencing magistrate to be a straightforward matter. Probation personnel were present at court and could comment on the availability of various sentencing disposals, but they could not comment fully on the offender's suitability for various sanctions, as there was no information available as to whether he had any previous convictions in his Home Member State. It was not possible therefore to make any reliable assessment of the harm he may pose to the public.

Due to the low level of seriousness of the new index offence, the offender was sentenced to a community based sentence as his formal sanction. During the execution of this sanction a serious incident occurred where the offender posed a significant risk to public safety.

As a result of the new incident the national police made a request for further information from the Home Member State. It was discovered that the offender had previously been convicted of a number of very serious offences in his home country. If this had been known earlier, the decision to impose a community sentence would have been re-considered.

The potential expediency of the ECRIS system is quite widely recognised and some Member States are now in a position to exchange conviction data electronically and use ECRIS proactively to request and exchange conviction data when appropriate and legal to do so, rather than simply seeing it as a system of notification post-conviction. However the subsequent dissemination of this information to other relevant agencies during the course of any further criminal, sentencing or enforcement proceedings has yet to be fully established.

### **4.3 Investigation Information and Police Intelligence Exchanges**

Exchanging Intelligence data to progress a criminal investigation, or in order to resolve a current criminal matter was accepted by the majority of law enforcement respondents as a fundamental part of policing practice. It was also recognised that this was facilitated under EU frameworks for increased cooperation and mutual assistance between law enforcement

agencies.<sup>45</sup> The benefits of such cooperation were broadly agreed with thirty four respondents from twenty one different Member States confirming that police intelligence and criminality information was exchanged with other Member States in such circumstances. However four respondents thought that there was no systematic process for requesting or providing such information to other Member States for investigation purposes and the need, validity and method for doing so would be decided upon a case by case basis.

The appetite for this type of exchange remains embedded primarily in the dominant view of the policing function as one which seeks to solve crime. Previous studies (see EC 2010)<sup>46</sup> have acknowledged that police cooperation across the EU is well established in this respect. However, exchanges driven by public protection preventative purposes remain more contentious.

### 4.3.1 Methods of Exchange

Full details of the range of existing mechanisms for information exchange between law enforcement personnel across the EU are provided in the SOMEK Mapping Report ([http://www.cep-probation.org/default.asp?page\\_id=563](http://www.cep-probation.org/default.asp?page_id=563)). The methods by which investigation and police intelligence information exchanges may occur varies significantly and the main ones which law enforcement respondents advised were used for such purposes are highlighted here:

- Central Bureau- using Request for Further Information (RFIs) (7)
- Central Bureau/SPOC- as a filter for all types of communication (8)
- Interpol (5)
- Europol (6)
- Formal regional bi-lateral and multi-lateral arrangements (4)
- Informal regional arrangements with other Member States (6)

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<sup>45</sup> Such as: Swedish Framework Decision 2006/960/JHA, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 20 April 2010 – Delivering an area of freedom, security and justice for Europe's citizens – Action Plan Implementing the Stockholm Programme [COM(2010) 171 final, Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.

Draft updated Catalogue of Recommendations for the correct application of the Schengen Acquis and Best practices: Police cooperation 15785/1/10.Council of European Union. Chp 3 Art 40 "The Spontaneous exchange of information and intelligence in criminal matters and in public order and security".

<sup>46</sup> European Commission (EC) (2010) *Study on the status of information exchange amongst law enforcement authorities in the context of existing EU instruments*. International Centre for Migration Policy Development JLS/2009/ISEC/PR/001-F3.

The majority of respondents (twenty two) indicated more than one possible option. Broad headings such as Interpol, Europol and Schengen SIS II also clearly cover a variety of possible communication strategies in themselves such as the use of Interpol Green Notices, targeted disseminations, Schengen SIS II alerts and supplementary information pursued via SIRENE bureaux. A number of the law enforcement respondents held responsibility for some aspect of international law enforcement exchange and therefore their awareness of the existing mechanisms is to be expected. However those engaged in other operational policing functions were less aware of all of the communication channels available. This lack of awareness has been reflected in other research (Magee 2008).<sup>47</sup> Magee's study found that staff engaged in more routine policing activities and investigation processes were not fully aware of the communication channels open to them, or how to access them for further information.

#### **4.3.2 Identifying good practice in Information and Police intelligence exchanges across EU borders**

Seven of the law enforcement respondents from five Member States referred to the use of a National Central Bureau for international communication, where formal requests for information (RFI) may be sent and received, but it was not clear that other exchange facilities such as Interpol and Europol National Units (ENU) were housed there. Eight respondents from eight different Member States did describe a national structure where there was a single point of contact (SPOC) for all forms of international law enforcement exchanges and that this encompassed the bureaux for Interpol, Europol, Prüm and where appropriate Schengen Information System II (SIS II). The coordination of mechanisms for exchange via a Single Point of Contact (SPOC) model was clearly advocated by four of these eight respondents who considered that their Member State's approach to police intelligence exchanges across EU borders was generally working well.

Other comments regarding strategies which were seen to assist in the effective exchange of information included the need to make appropriate assessments of the type of information which was to be sent or requested, coupled with knowledge and expertise to make well informed choices about which method of exchange would be the most appropriate to adopt. Three respondents commented on the need to take targeted action, being clear about the purpose of the request and the most effective way of achieving the aim of the exchange with the receiving Member State. Again, it was thought that a SPOC in all Member States would assist with this. This observation was re-iterated in task group discussions, where law

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<sup>47</sup> Magee, I. Sir (2008) *The Review of Criminality Information*. London: ROCI.

enforcement personnel generally agreed that all of the existing mechanisms for exchange had various strengths for particular types of communication across EU borders, but that there was a lack of any consistent understanding and application of their various features across the Member States.

In situations where the whereabouts of an individual were unknown and targeted communications were not feasible, mechanisms for alerts which had direct levels of access by operational staff were favoured by two interview respondents and some of the task group participants. The front line access that law enforcement officers have to Schengen SIS II alerts for example, as an initial indication that supplementary information is available, is seen as an advantage. However, the operational practicalities of this were also discussed, with a number of task group participants commenting that an additional flagging system on SIS II indicating the nature of the alert would be useful. For example, to highlight that the individual was a serious violent or sexual offender to assist front line personnel in determining the type of priority to be afforded to the alert.

Unless the matter stretched beyond EU borders, two respondents expressed concern regarding the use of Interpol Green Notices which could be accessed by all 190 Interpol Member States and where agreements regarding Human Rights frameworks and Data Protection standards were not uniformly established. Targeted disseminations via Interpol were advocated by five Member States and seen to be particularly useful to those who had borders with other European countries who were not in the EU. However using Interpol processes received a mixed reaction with six Member States advising that communications via Europol were more likely. In particular the close working relationships established by each Member State's Europol liaison officer based in The Hague were described as an effective development in EU wide law enforcement cooperation.

The need to balance the development of solid working relationships, cooperation and communication with known members of staff against the drive towards more centralised processes was highlighted by ten respondents. Information exchanges with neighbouring countries was often frequent and regarded as efficient, however EU wide communication and the use of centralised systems was seen to be more problematic. Shared social histories and common understandings of jointly held criminal concerns, together with the regularity of travel of national citizens between neighbouring states, rather than across the wider EU, were cited as being the main reasons for this increased level of regional cooperation.<sup>48</sup> In six

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<sup>48</sup> EU regional arrangements are in place because of the geographic location, cultural ties and historic shared borders that exist. In the Nordic countries, the UK and Ireland for example this is because of longstanding political, legal and social developments. The 'South East Europe Law Enforcement Cooperation Centre', (SELEC) is formed of both EU and Non EU countries in South East Europe who have agreed to share police to police information on organised crime matters. The

cases, this was discussed as an informal process relying on knowledge of particular personnel across land borders. Four respondents discussed regional bilateral and multi-lateral partnerships which had been forged with neighbouring countries to extend legal parameters and effectiveness in the detection of jointly held issues of criminal activity. For two respondents with a shared land border this included specific developments for monitoring and managing serious violent and sexual offenders who were moving regularly from one Member State to the other.

#### **4.4 Proactive/Preventative Exchanges of Criminality Information**

Proactive/preventative exchanges of criminality information, where the serious violent or sexual offender may not currently be subject to an investigation or sanction are one of the most challenging areas of law enforcement and offender management cross border communication and cooperation. Here the decision to exchange the information should be determined by a well evidenced, comprehensive knowledge of the individual, their pattern of offending, the level of seriousness of harm posed and the high likelihood that further offences will be committed (see Identification and Assessment section 3).

Fourteen law enforcement respondents from eleven different Member States, advised that exchanges of information on serious violent or sexual offenders with the aim of preventing future crimes may occur. A further seven respondents stated that it was possible that such an exchange may take place but they were less certain of this, often due to their lack of direct responsibility and knowledge of practice in this area, but also due to it being a very rare situation (1) or more likely to occur only if there was also a current investigation of some description (3).

- In total twenty one respondents from fifteen different Member States agreed in principle to the need for proactive/preventative information exchanges on serious violent or sexual offenders.
- However, eight respondents from eight different Member States advised that proactive/preventative exchanges on serious violent or sexual offenders would definitely not be initiated in their country.
- There were an additional seven responses where a commitment or opposition to preventative information exchange was unclear or had not been addressed by the respondent.

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Baltic States were formally part of the Soviet Union and have retained joint operational working practices and sharing arrangements since the dissolution of the Russian States. Spain and Portugal have longstanding agreements from their historical and geographic connections.

#### 4.4.1 A proactive, systematic approach

Of the fourteen respondents who stated that proactive/preventative exchanges, as described above, could be instigated in their Home Member State and the additional seven who considered it to be a possibility, only five from five different Member States described a proactive stance where the need to do so was actively determined on a systematic basis.

- Two of these five proactive responses viewed the exchange of information on offenders known to be travelling cross EU borders as part of a routine procedure for all known transient offenders and not an activity which was just reserved for the most serious violent or sexual offenders. Concerns have been raised in other parts of the analysis however that such an approach may lead to an overloading of information exchange systems with unnecessary volumes of data (see Responding to incoming information section 6).which becomes unwieldy and difficult to manage.
- The three other proactive respondents described an individual case by case assessment of offenders. These three respondents advised that those posing the most significant level of harm to others were initially identified and assessed at a national level, leading to the communication of such information to other Member States when such an individual then became mobile across the EU community. They described similar assessment processes at a national level across these three Member States for the identification of serious violent or sexual offenders- drawing upon multi-agency strategies for public protection and the management of serious violent or sexual offenders.

#### 4.4.2 The rationale and criteria for proactive/ preventative information exchanges

All five proactive law enforcement respondents considered exchanges of information on serious violent or sexual offenders to be justified on the grounds of preventing crimes and honouring the rights of victims to be protected from harm. In all five of these proactive responses, it was considered that there were legal grounds at a national level for exchanging information on these terms. One of the five respondents also referred to the Swedish Framework decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union.

“We think that this type of exchange is always justified and it is also foreseen by the European legislation and agreements (see art.46 CAAS and art 7 FWD 2006/960)”

After the five proactive responses, of the other sixteen law enforcement respondents who stated that proactive/preventative forms of information exchange may occur, nine specified that the evidence required to substantiate such a course of action would need to be extremely reliable. Terms such as “concrete suspicion” and “reasonable suspicion” were cited by these nine respondents.

- For these nine respondents (from eight different Member States), whilst they supported the principle of proactive/preventative information exchanges and thought it could ultimately be facilitated, they all advised that it would be difficult to justify sharing information in circumstances where specific details of the intended target and travel destination were unknown (concrete suspicion).
- Four of the nine advised that where the risk posed was towards children- an exchange may be more likely to occur. However all four respondents thought this type of exchange would be much harder to justify in relation to any risk posed towards adult victims, seeing the vulnerability of children to be an added incentive and justification for exchanges to be made.
- Six of the nine respondents advised that the caution demonstrated in sharing information on serious violent or sexual offenders in a proactive/preventative manner was as a result of national legal boundaries and rules of data protection which preserved the privacy rights of the individual national citizen. Once a formal sanction had been completed and with no current investigation, the full rights of all national citizens would be restored. It was felt that the evidence of an imminent act of serious harm would need to be overwhelming and the details of its nature very specific before such rights could be negated.
- Eight respondents from eight Member States considered that even where the “concrete suspicion” criteria of serious future harm was met, that exchanges of information across EU borders would still be illegal under the national legal frameworks of the Member State if there was no current police investigation, criminal proceedings or formal sanction.
- Three of these eight respondents clearly advocated for changes to these national legal frameworks, including changes in the way serious violent or sexual offenders were identified and managed in their Home Member State (3). They also



advocated improvements in cross border communication on such offenders who were mobile across the EU (2). These included:

- The development of national registers of sexual offenders.
- The utilisation of just one method of EU information exchange.
- Consistency in the standard of information sent and received.

Overall, however, despite a recognition of the benefits of proactive/preventative information exchanges - according to seventeen law enforcement interview respondents from fifteen different Member States communications on this basis are unlikely to occur. Nine respondents cited stringent threshold criteria which may not be met in many cases and eight respondents stated there would be absolutely no possibility of exchange where there was no current investigation or sanction in place.

#### **4.4.3 The permissive EU framework for proactive/preventative exchanges of information**

When the above finding was presented at the task groups, the response from law enforcement personnel regarding the capacity for proactive/preventative exchanges was far more positive, with the majority of participants stating that where there was a clear public protection issue a number of existing exchange mechanisms might be utilised to achieve this goal. It was felt that a key issue for other personnel may be a lack of understanding of the EU framework which enables this level of cooperation,<sup>49</sup> together with a lack of awareness of the various existing exchange mechanisms, their use and purpose. It was also recognised that some Member States may not yet be in a position to actively engage in effective proactive/preventative exchanges across the EU as their domestic levels of communication between relevant agencies and the effective identification and assessment of the most serious violent or sexual offenders had not yet been established.

Generally law enforcement task group attendees had responsibilities for one or more of the existing exchange mechanisms for their Members State or were well versed in the range of possibilities available. This may explain to an extent the different responses received at these events. However it may also confirm the observation made previously that knowledge

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<sup>49</sup> Such as: Swedish Framework Decision 2006/960/JHA, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 20 April 2010 – Delivering an area of freedom, security and justice for Europe's citizens – Action Plan Implementing the Stockholm Programme [COM(2010) 171 final, Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime,

Draft updated Catalogue of Recommendations for the correct application of the Schengen Acquis and Best practices: Police cooperation 15785/1/10.Council of European Union. Chp 3 Art 40 "The Spontaneous exchange of information and intelligence in criminal matters and in public order and security".



of the methods by which such exchanges can occur and the benefits of both sending and receiving appropriate communications, does not appear to extend far beyond those responsible for managing the operational tools themselves.

#### 4.4.4 Where preventative information exchanges occur, how does it work?

Where proactive/preventative information exchanges did occur across the EU community or were cited as a possibility if the situation arose and threshold criteria was met, respondents generally rehearsed the same methods of communication which would be utilised in the more common experiences of Information exchange. A variety of exchange mechanisms were utilised.

**Table 4.1** identifies the mechanisms most likely to be adopted by the fourteen respondents who advised that proactive/preventative exchanges may occur (more than one option was highlighted in many of the responses).

**Table 4.1: Mechanisms used for proactive/preventative exchanges**

Interpol Green Notices	Interpol Dissemination Channels	Europol	Central Bureau/ SPOC	Prüm	SISII	Embassy Liaison officers	Formal Bilateral
12	10	7	8	1	8	4	5

Whilst Interpol communication channels dominate as a choice of mechanism for exchange, this should be viewed in the context of at least nine of the fourteen respondents discussing exchanges being made in principle only, without any actual experience of such a process. The comments may therefore be speculative and linked simply to the systems the respondent is most aware of and/or has utilised for other exchange purposes rather than a reflection of direct practice. Five respondents have highlighted the use of a Central Bureau/Single Point of Contact as a coordination point for all forms of International law enforcement exchanges, housing Interpol and Europol and where relevant SIS II. As with other forms of criminality information exchange between EU Member States they commented positively on this centralised approach.

Once the decision to exchange information was seen to be justified then eight respondents advocated that all relevant information should be passed on to the receiving Member State to

ensure that they are able to respond as effectively as possible. They advocated that information exchange should include details such as:

- Previous convictions
- Current concerns- specific nature of the current harm posed
- Offender assessment- risk levels, patterns of behaviour
- Modus Operandi
- Details of travel, dates, destination
- Associates and contacts in the receiving Member State
- Identification data, biometrics, finger prints, photos

## 4.5 Factors limiting the effectiveness of Law enforcement criminality information exchanges

The main issues which were viewed by law enforcement respondents to impede the effectiveness of all forms of criminality information exchange across the EU included:

- The amount, quality and timeliness of the data provided is extremely varied. (11)
- There is a lack of a coordinated response. Relevant information is held in variety of places and a comprehensive picture is hard to obtain. (2)
- There are too many mechanisms for exchange and a lack of clarity as to how they should be used. (3)
- Some Member States overuse certain channels/alert systems and do not prioritise. This results in large quantities of information being received which cannot be responded to effectively. (3)
- Member States do not always understand the priority required. (3)
- Member States have different legal parameters and data protection rules about how much information and what different types of information can be shared. (7)
- Member States have different understandings of how to manage sensitive information and different levels of access restrictions are applied by different Member States. (3)
- The lack of detailed information on the offender and the risk that they pose makes it difficult to ascertain what actions are needed. (8)

- The lack of information on travel details- Although specific destination details may not be known, the rationale for believing the offender is mobile across the EU should be clear rather than sending data to “everyone” just in case. (6)

Two respondents thought that international exchanges across the EU were relatively unproblematic and that it was the national level of communication between law enforcement, judicial departments and offender management agencies which was more challenging in many of the Member States.

## **4.6 Respondent suggestions for development**

- Nine respondents advocated the development of a harmonised approach across the EU in relation to proactive/preventative information exchanges on violent or sexual offenders, with improved communication and joint understandings of what should happen when a serious violent or sexual offender is travelling across the EU community. These respondents promoted that the varied approaches to making such disclosures which currently existed needed to be addressed.
- Six of these nine respondents supported the development of one, common EU database and a single choice of mechanism and streamlined approach to communication about such offenders across the EU community for these type of offenders.
- Ten respondents from nine different Member States wanted to see national level developments in their own countries including improved processes for identifying and monitoring violent and sexual offenders and sharing information across the EU when appropriate to do so. However only two respondents advised that plans to implement such strategies were actually occurring in their Home Member State.

It was clear that the core EU principle of freedom of movement and a balance of individual Human Rights as advocated by five respondents should be fundamental considerations in any such developments. Restricting and monitoring travel was not seen as a realistic or even a desirable prospect by five respondents (foreign travel bans are discussed in more detail in section 5.2). However it was thought that strategies for improved communication and surveillance across borders might still be pursued. It was observed in task group discussions that cross border communication appears to break down in particular where an offender passes through several Member States in relatively quick succession. The offender’s whereabouts and/or final destination may be unknown. Details of the offender’s movement or ‘disappearance’ are therefore as important as information on their offending pattern and an assessment of the serious harm they pose.

## **4.7 Summary**

The EU community is moving towards a full adoption of the ECRIS system for **the exchange of conviction data**, although currently still occurring in paper form on occasion. The responsibility for such exchanges varies depending primarily on the roles held by law enforcement and judicial offices and for the majority of Member States it is housed within the latter. The issue has been highlighted here that ECRIS can be approached primarily as an administrative function only. Despite the mandate of FD 2008 675/JHA<sup>50</sup> Member States continue to hold different perspectives and legal parameters for considering the relevance of convictions acquired in other Member States in any new criminal proceedings. Having an accurate picture of an offender's criminal history is vital to ensure future public safety. Even where this is recognised, the accessibility of conviction data for foreign EU nationals appearing in other EU courts is not yet routine. Processes to ensure the further appropriate dissemination at a national level in each Member State of conviction data acquired from other Member States need to be reviewed.

In terms of **police intelligence data and information exchanges**, whilst not all of the existing mechanisms for communication across EU borders are being used consistently to their maximum potential (see also EC 2010), devising an additional system will not necessarily resolve this. Whilst some decisions regarding the choice of mechanism to be used are determined by resources at a national level, others are influenced by the nature of the inquiry and request to be made. Positive comments have been made regarding the use of a SPOC in each Member State, which houses all of the available dissemination channels and where personnel are well informed on the nature and benefits of the various communication options available to them. The need for a greater level of awareness of the potential for information exchange across EU borders from a broader range of law enforcement and offender management personnel has also been identified.

In relation to **proactive/preventative** exchanges national processes for determining those violent or sexual offenders who pose the greatest threat to the public vary across the EU community and this needs to be resolved (see section 3). The lack of awareness or varied interpretation by Member States of the EU framework which enables the exchange of information to prevent further serious crimes occurring is also a key issue. The decision to share such information across EU borders when the offender is mobile across the EU is currently determined by a range of different rules in different Member States. Access to

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<sup>50</sup> Council Framework Decision 2008 675/JHA on the taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.

information is limited by varying national frameworks about the legal right to make disclosures, privacy and data protection. This is linked closely in at least eight Member States to the ethical arguments that restore the full rights of liberty and privacy to a citizen following the completion of any formal sanction. However a more standardised process of identification and assessment at a national level across the EU, may serve to satisfy the “concrete suspicion” threshold criteria for exchange across EU borders that several respondents currently saw as a necessity.

The appetite of a Member State to engage in further developments in this area is also influenced by migratory patterns, the scale of concern regarding the criminal activity of their national citizens in other Member states, together with the reciprocal scale of foreign EU nationals committing crimes in their country. Significantly effective bi-lateral and multi-lateral arrangements for information exchange have been developed for a number of neighbouring Member States where these factors are prevalent.

## **4.8 Moving to a proactive/preventative approach in EU Criminality information exchange**

The overarching permissive framework of the Swedish Framework Decision 2006/960/JHA needs to be more comprehensively understood by all Member States in relation to its role in preventing further offending by serious violent or sexual offenders across the EU community.

A Single Point of Contact (SPOC) for all forms of criminality information exchange, where mechanisms such as Schengen SIS II, Interpol and Europol facilities and where bilateral or multi-lateral regional agreements may be housed and managed have been presented as a model of good practice (see also section 5.4.2). Further work is already being undertaken to continue to develop the functioning of SPOCs in all Member States.<sup>51</sup> This development should include a consideration of proactive/preventative exchanges on serious violent or sexual offenders. It should also examine collaborative working with other criminal justice agencies and the further exchange and dissemination of incoming information at a national level with other relevant personnel.

Achieving standards in the quality of information shared needs to be addressed to enable effective responses to incoming information (see sections 3, 5 and 6).The most effective

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<sup>51</sup> Council of the European Union DAPIX 75, ENFOPOL 157, Draft Guidelines for a Single Point of Contact (SPOC) for International law enforcement exchange- International law enforcement cooperation structures in each member State. Brussels, 23 June 2014.

route for a targeted communication with another Member State will also be better informed via an increased expertise and awareness of the potential of all existing forms of exchange.

The possibility of developing a dedicated EU alert system where the ultimate destination for mobile serious violent or sexual offenders is unknown is also an important consideration. Some facility for this is already available. Subsection 2b of Article 36 of the SIS II Council decision<sup>52</sup> enables Member States to make such an alert *“Where an overall assessment of a person, in particular on the basis of past criminal offences, gives reason to suppose that that person will also commit serious criminal offences in the future, such as referred to in Article 2 (2) of the Framework Decision 2002/584/JHA”*. Such alerts have the benefit of being directly accessible to front line law enforcement personnel with instructions as to what action should be taken under the provisions of a ‘specific check’ or ‘discreet surveillance’. However, the full circumstances relating to the alert are only available via a request for supplementary information which is subsequently made to the relevant SIRENE Bureau.

Establishing the threshold criteria for making a serious violent or sexual offender subject to an article 36 alert on a proactive/preventative exchange basis needs to be determined, albeit that several Member States are already clear that they can highlight individuals in this manner. Other respondents have advocated a further development of SIS II, with the addition of a new dedicated alert for serious violent or sexual offenders which permits a more overt response.

Once the criteria for establishing who the most serious violent or sexual offenders are in each individual Member State is determined (section 3) and the process for exchanging information once the individual is mobile across the EU is broadly agreed (section 4), then the quality of the information provided is the next important consideration, together with the processes available at a national level in each Member State to monitor and manage the risk posed by such offenders. These issues are examined in the following section 5.

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<sup>52</sup> Council Decision 2007/533/JHA on the establishment of the operation and use of the 2<sup>nd</sup> generation Schengen Information System (SIS II).

## Section 5 - The Management, Monitoring and Information Exchange on serious mobile violent or sexual offenders

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### 5.1 Introduction

This section focuses on the type of monitoring undertaken on serious violent or sexual offenders, including cross-border co-operation and the management of those who are mobile across the EU. The analysis includes an exploration of the use of restrictions and travel bans, the use of Framework Directive 2008/947/JHA<sup>53</sup> and responses to the deportation of serious violent or sexual offenders. This section draws predominantly upon responses from offender management/probation staff; but where appropriate, the views of law enforcement personnel are incorporated, particularly where such personnel contribute significantly to the management and monitoring of serious violent or sexual offenders travelling across borders.

The following sub-sections address:

- The range of provisions for monitoring and managing serious violent or sexual offenders.
- The use of foreign travel restrictions and bans.
- Monitoring which continues after the completion of a formal sanction or sentence.
- Inter-agency or multi-agency co-operation on the monitoring of serious violent or sexual offenders.
- Transfer of supervision, conditional release and other probation sanctions under Framework Directive 2008/947/JHA.
- Monitoring the movement of serious violent or sexual offenders.
- Deportation.

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<sup>53</sup> Framework Decision 2008/947/JHA (FD 947) allows for people convicted in one Member State to transfer to their home Member State to serve a probation measure or alternative sanction. This can include forms of probation supervision and conditional release and these are considered the most pertinent to SOMECS issues.

## 5.2 The range of provision for monitoring serious violent or sexual offenders

Twenty-six of the twenty eight Offender Management respondents (representing nineteen Member States) described some form of monitoring arrangements for serious violent or sexual offenders. These tended to consist of specific, formal and legally-sanctioned sentences or civil orders for violent or sexual offenders, including conditional release<sup>54</sup> as well as more generic restrictions attached to supervision in the community.

Of these, nine respondents representing seven Member States referred to arrangements or provisions specific to sex offenders or violent offenders. These included:

- Specific sentencing including public protection sentences.
- Extended sentences and conditional release (predominantly for sexual offenders).<sup>55</sup>
- Three Member States referred to notification and registration systems (predominantly related to sexual offenders).<sup>56</sup>
- Civil Orders such as Sexual Harm Prevention Orders, Violent Offender Orders.<sup>57</sup>
- Inter-agency or multi-agency systems designed to respond to and monitor offenders specifically assessed as 'high risk', with a focus on risk management and victim protection.<sup>58</sup>

A further ten respondents from ten Member States indicated that serious violent or sexual offenders are more likely to attract lengthier custodial sentences, which may also involve

<sup>54</sup> Conditional release is defined by the EU thus: 'shall mean a final decision of a competent authority or stemming from national law on the early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served by imposing one or more probation measure.' NOTE: This may or may not involve post release supervision, restrictions or additional controls on the person. Council of the European Union, Questionnaire on the practical implementation of Council Framework Decision 2008/947/JHA November 2008 on the application and principle of mutual recognition to the judgements and probation decisions with a view to the supervision of probation measures and alternative sanctions- Summary of the answers by delegations in reply to the questionnaire. Available at: <http://db.eurocrim.org/db/en/doc/1375.pdf>; accessed October 23<sup>rd</sup> 2014.

<sup>55</sup> See, for example, the Order for Lifelong Restriction in Scotland <http://www.rmascotland.gov.uk/news-and-information/faq-s/oltr/>; accessed May 21<sup>st</sup> 2014.

<sup>56</sup> France, Republic of Ireland and the UK.

<sup>57</sup> See for example developments in England and Wales.

<sup>58</sup> See developments in England and Wales for example: <http://www.justice.gov.uk/downloads/offenders/mappa/mappa-guidance-2012-part1.pdf>; accessed May 21<sup>st</sup> 2014. Peck, M. (2011) *Patterns of reconviction among offenders eligible for Multi-Agency Public Protection Arrangements (MAPPA)*. London: Ministry of Justice Research Series 6/11. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217373/patterns-reconviction-mappa.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217373/patterns-reconviction-mappa.pdf); provides an evaluation of MAPPA impact on sexual and violent offence recidivism Peck, M. (2011) *Patterns of reconviction among offenders eligible for Multi-Agency Public Protection Arrangements (MAPPA)*. London: Ministry of Justice Research Series 6/11. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217373/patterns-reconviction-mappa.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217373/patterns-reconviction-mappa.pdf), this provides an evaluation of impact on sexual and violent offending recidivism under MAPPA.



higher security, or more conditions attached to release, although such conditions most often have to be applied at the point of sentence and not at the point of release. Other custodial sentences referred to by respondents included secure preventive detention and treatment orders and indeterminate detention under mental health legislation both of which, it was said, were more likely to be imposed upon serious violent or sexual offenders (the latter was reported by only one Member State).<sup>59</sup> These responses may be characterised as largely 'community protection measures' although it is possible that some measures are both rehabilitative as well as community protective in nature.<sup>60</sup>

Utilising task group data and all interview material it is possible to identify at least six Member States where serious violent or sexual offenders may enter the psychiatric system.<sup>61</sup> Only seven Member States described post-custody supervision specifically for serious violent or sexual offenders, variously described as licence, parole, conditional release, conditional liberty, 'monitored freedom', or protective supervision.<sup>62</sup> In one Member State such arrangements applied to sentences of more than four years; whilst another Member State applied a standard twelve month licence period in all cases. A further Member State planned to introduce post-custody supervision arrangements via a new Penal Code in 2014. (The position on conditional release is discussed in more detail in sub-section 5.5).

In relation to other monitoring arrangements, these can be imposed either by the court at the point of sentence, and in some instances post-custody. However, it is unclear how far these are reserved for serious violent or sexual offenders, or are more widely applicable, although one respondent did suggest that serious violent or sexual offenders are more likely than other offenders to be subject to such restrictions. The most common restrictions or conditions applied post custody are:

- Travel restrictions or bans. (6)
- Residency restrictions controlling where offenders may live, or exclusions from particular areas or addresses. (8)

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<sup>59</sup> However, mental health provision was not specifically covered in the interviews and it is possible that other Member States use compulsory and indeterminate mental health provision to both treat and manage serious violent or sexual offenders. See Auger et al (2010) on compulsory Therapeutic Injunctions in France; Basdekis-Jozsa et al (2013) on the position in Germany; and Kelly (2008) for a comparison of compulsory mental health detention in the USA and Germany.

<sup>60</sup> See Kemshall, H. (2008) *Understanding the Community Management of High Risk Offenders*. McGraw-Hill.

<sup>61</sup> As the interview schedule did not specifically ask about psychiatric responses it is possible that this number is an under-representation.

<sup>62</sup> This is largely based on Offender Management responses, and may not necessarily be accurate although it was assumed that respondents were at a sufficient level within their organisation to have the knowledge and competence to answer. It should also be noted that conditional release does not necessarily imply post release supervision, this can vary across Member States, and the type of restrictions and conditions applied to such licences also varies.

- Employment vetting and barring (1 Member State, however this mechanism is more common across Member States).<sup>63</sup>
- Electronic monitoring. (4)
- There are also restrictive measures which are associated with what one respondent described as 'Enhanced Case Management' based on assessments of risk. These include a greater frequency of contact (9), greater inter-agency monitoring and information sharing usually between police and probation (2), and in one instance a higher level and intensity of case management.

However it is not clear from the data how often such measures are used or how many serious violent or sexual offenders are likely to be the subject of such measures

One Member State has an arrangement which is translated as "Safety Houses". This is an arrangement in which representatives of agencies providing services to offenders and those with law enforcement responsibilities are co-located so that case directors (and others) can refer difficult, needy, or what they define as 'high risk' cases so that inter-agency case plans can be developed. These arrangements involve higher levels of monitoring and quality assurance.

### 5.3 Foreign travel restrictions and bans

Combined responses from law enforcement and offender management personnel indicated that six Member States had mechanisms to restrict or ban foreign travel for serious violent or sexual offenders<sup>64</sup> although all measures reported related specifically to sexual offenders. In some Member States such restrictions could only be applied at the point of sentence at court but not retrospectively. As such they mainly operate as a condition attached to community supervision or conditional release from the custodial component of a sanction. Only three

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<sup>63</sup> See for example: Jacobs, J. and Blitsa, D. (2012) *US, EU and UK Employment Vetting and Strategy for Preventing Convicted Sex Offenders from Gaining Access to Children*. New York University Public Law and Legal Theory Working Papers. Available at: [http://lsr.nellco.org/cgi/viewcontent.cgi?article=1366&context=nyu\\_plltwp](http://lsr.nellco.org/cgi/viewcontent.cgi?article=1366&context=nyu_plltwp); accessed May 21st 2014; <http://www.eesc.europa.eu/?i=portal.en.soc-opinions.14768>; accessed May 21<sup>st</sup> 2014, page 8; [http://www.kekidatabank.be/docs/Instrumenten/RvE/2010%20PACE%20Res%201733\\_Reinforcing%20measures%20against%20sex%20offenders.pdf](http://www.kekidatabank.be/docs/Instrumenten/RvE/2010%20PACE%20Res%201733_Reinforcing%20measures%20against%20sex%20offenders.pdf), para 16.4; accessed May 21<sup>st</sup> 2014.

The Opinion of the European Economic and Social Committee on Preventative Measures for the Protection of children against sexual abuse. 5.2 called for a consistent approach to employment vetting for those seeking to work with children across the EU which closed the loopholes between Member States which travelling sex offenders were able to exploit. It called for screening and sharing of information across EU borders, including "soft information" about people who had been identified as a risk to children but who do not have a conviction for child abuse. Vetting procedures should be seen as mandatory across the EU, with consistent Europe wide standards. The Official Journal of the European Union C24/154. The opinion builds on the initial recommendations for monitoring and vetting contained in Council Framework Decision 2004/68/JHA of 22<sup>nd</sup> December 2003 on combating the sexual exploitation of children and child pornography.

<sup>64</sup> This figure is derived from respondents' feedback and may not necessarily be accurate although it is assumed that for the most part respondents were at a sufficiently senior and national level within their organisation to know about current legislation and policy within their Member States.

Member States indicated that they could, or did restrict travel after a sentence had been imposed. A further two used enforcement and recall mechanisms to prevent travel, and two other Member States arrested offenders on their return for a breach of their supervision requirements or used European Arrest Warrants (EAW) to obtain the return of the offender. However task group discussions highlighted that in the case of a failure to comply with supervision requirements, or in one case a breach of a sex offender registration notification due to an offender travelling across EU borders without due permission, the support of the Courts and the instigation of enforcement proceedings varied greatly. Courts were described as being reluctant to act in relation to the latter and issue an EAW for what was seen to be a civil proceeding.

The general view from interview and task group data was that travel intentions were usually unknown and that if someone wished to travel they did so. Knowledge of travel arrangements is critical, and a lack of knowledge about them was cited as a core reason preventing staff from taking any action. However, most Member States also expressed the view that travel restrictions or bans were not acceptable as they infringed upon the basic EU principle of freedom of movement, although respondents were more likely to agree on restrictions for serious child sexual offenders.<sup>65</sup> Other respondents raised issues with the practicalities and efficacy of foreign travel bans, for example in knowing that a person is going to travel and where to. In part this relates to internal domestic monitoring arrangements and whether they exist or not, and the presence or absence of conditional release arrangements.

Even where extensive domestic monitoring arrangements exist and movement across borders, entry and exit routes, may be easier to monitor, foreign travel orders can still be underused. In the UK for example, 50 Foreign Travel Orders were made between 2005 and the first four months of 2012, lower numbers than those expected relative to offenders with a qualifying conviction (The Davies Review 2013 p15), although 3,000 foreign travel bans were made on football hooligans in 2008 alone.<sup>66</sup>

## **5.4 Continued monitoring following the completion of a formal sanction or sentence**

Three Member States reported any use of monitoring following the completion of a formal sanction or sentence. Where this did occur, these included sex offender registration and

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<sup>65</sup> MS are prepared to use travel bans for football hooligans. The international issue of football hooliganism was met with a coordinated European response which sees the effective exchange of information on known high risk perpetrators who are travelling to events with the primary purpose of engaging in violence (Frosdick and Marsh 2005).

<sup>66</sup> (see: [http://news.bbc.co.uk/1/hi/uk\\_politics/7571451.stm](http://news.bbc.co.uk/1/hi/uk_politics/7571451.stm); accessed June 5<sup>th</sup> 2014).

notification systems, the use of civil orders, and lifelong restrictions under public protection sentences.<sup>67</sup> These measures were introduced on public protection and victim safety grounds. One respondent discussed informal police supervision; and one also mentioned the possibility of ongoing voluntary contact for the purpose of continuing work with the Probation Service. Generally, the responsibility for any continued supervision or monitoring extending beyond the end of a formal sanction lies with Law Enforcement Agencies. One respondent referred to indeterminate detention where there are mental health issues; three talked about the possibility of preventive detention; in at least six Member States psychiatric treatment was mentioned, with some serious violent or sexual offenders being dealt with post court and at times at the end of a sanction via the psychiatric system.<sup>68</sup> In addition, one respondent pointed out that in their Member State sexual offence convictions are never spent. However, in other Member States convictions, including serious offences, are removed and erased. This can create difficulties in transmitting accurate information about offence histories or tracking individuals across borders, as the offences are spent and are simply not available to pass on to other Member States.

## 5.5 Inter-agency or multi-agency co-operation on monitoring of serious violent or sexual offenders

### 5.5.1 Within state inter-agency co-operation

Three Member States have significantly developed multi-agency arrangements for assessing, managing and monitoring serious violent or sexual offenders.<sup>69</sup> This includes significant inter-agency working between police and probation. Whilst variable in form across these three Member States, it does include joint-agency management and monitoring projects, multi-agency public protection arrangements, multi-agency risk assessments, information sharing forums, and multi-agency community management of serious violent or sexual offenders. All of these Member States also use formalised risk assessments based upon specific assessment tools. The perceived benefits of such an approach were seen as: increased and effective information exchange between police and probation; joint risk assessments and improved risk assessment; and joint management particularly of what they

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<sup>67</sup> This related largely to provisions in the UK, in particular England and Wales; and provisions in Scotland under the Order for Lifelong Restriction.

<sup>68</sup> For example, France uses '*Injunctions Therapeutiques*', see Auger et al (2010). As the interview schedule did not specifically ask about psychiatric responses, it is possible that this number is an under-representation.

<sup>69</sup> These Member States are the UK which has significantly developed and formalised multi-agency systems which extend beyond the police and probation where relevant, the Republic of Ireland with more recent developments, and joint working and co-location of police and probation in the Netherlands.

defined as 'high risk' offenders in the community.<sup>70</sup> Such arrangements were also seen as contributing to the safe resettlement of offenders into the community post custody, with positive impacts on recidivism rates although their overall contribution to desistance is less clear from current research.<sup>71</sup>

One Member State, characterised by regional independence in probation matters, presented one region that has a developing multi-disciplinary and partnership network with a number of relevant agencies.<sup>72</sup> An additional nine offender management respondents from nine Member States referred to specific relationships between police and probation of varying types, ranging from those which were limited and in their very early stages to those which are more formalised, routine and well used. One Member State indicated that local procedures would benefit from a more systematic and national approach, and one Member State described the relationship between probation and police as in the process of review and development in the light of a recent serious incident which involved a breakdown in communication.

Two Member States described supportive community relationships, especially in rural areas, which were associated with the reintegration of offenders.

### **5.5.2 Across-border co-operation**

In terms of cooperation across borders, offender management personnel from eight Member States described arrangements for the exchange of information about offenders subject to formal supervision. These tended to be a combination of formal frameworks and informal relationships. The arrangements included bi-lateral agreements and were used by Members States who share a land border. There were also long-term Member State relationships and shared operational imperatives to manage the transit of offenders across a shared border, particularly sexual offenders. In addition to these eight Member States, attendees at the task groups noted that the Scandinavian countries have well developed systems based on shared

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<sup>70</sup> See also research findings: Wood, J. and Kemshall, H. (2007) *The Operation and Experience of Multi Agency Public Protection Panels (MAPPA)*. London: Home Office online report 12/07. Available at: <http://www.caerdydd.ac.uk/socsi/resources/MAPPA1207.pdf>; accessed July 24th 2014; Kemshall, H. and Wood, J. (2010) *Effective multi-agency public protection: learning from the research*. In: K. Harrison (ed.) *Managing High Risk Sex Offenders in the Community: Risk Management, treatment and social responsibility*. Cullompton: Willan.

<sup>71</sup> Peck, M. (2011) *Patterns of reconviction among offenders eligible for Multi-Agency Public Protection Arrangements (MAPPA)*. London: Ministry of Justice Research Series 6/11. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217373/patterns-reconviction-mappa.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217373/patterns-reconviction-mappa.pdf); accessed 9th October 2014; and Weaver, B. and Barry, M. (2014) *Risky Business? Supporting Desistance from Sexual Offending*. In: K. McCartan (ed) *Responding to Sexual Offending: Perceptions, Risk Management and Public Protection*. Palgrave.

<sup>72</sup> Two Member States in the OM responses are characterised by regional independence in justice matters with regional services having devolved responsibility and able to pursue different and at times innovative approaches to probation services.

language, culture, and regular cross border meetings of operational staff to share issues and solutions. This illustrates positive developments, but also highlights the challenge in replicating such systems at an EU level across twenty eight diverse Member States with differing languages, cultures and supervisory systems for offenders.

Other Member States with common land borders and an operational need to manage offenders moving to and from Member States had illustrations of almost daily and often personal contact between nominated Single Points of Contact. This immediacy between frontline staff was seen as important, with the potential that this could be lost by too much formalisation and increased bureaucracy. However arguably increased formalisation would also build on, and sustain, such informal relationships.<sup>73</sup>

A further nine respondents referred to the value of developing formal frameworks to facilitate cross-border monitoring and supervision and the need to raise awareness of practice across the EU to begin to develop a consistency of approach (see section 5.5 on the 'Transfer of supervision'). However, smaller Member States cautioned the cost and complexity of such systems, and the potential issues of having overly complicated and costly procedures, when the number of cases dealt was very limited. For example, one Member State simply did not have an adequate information technology infrastructure in place to promote information exchange both within and between agencies.

Additional barriers were identified in the task group discussions, with attendees highlighting the need for good internal domestic information exchange procedures to be in place before effective wider EU exchanges could occur. Poor communication across professional groups in different Member States was identified as a problem, with a lack of trust between personnel and a lack of perceived incentive or interest amongst some probation or law enforcement agencies to establish national networks. Legal constraints and how these were interpreted by practitioners, for example in the exchange of sensitive personal information was also a challenge. The differences in criminal justice systems across Member States was also seen as a difficulty, in terms of differing penal codes and judicial systems, but also because staff were often unfamiliar with how other Member States operate and who the relevant counterpart personnel were when it came to sharing different types of information across EU borders.

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<sup>73</sup> See Mapping Report of existing arrangements available at: [http://www.somec-project.eu/default.asp?page\\_id=565&name=Mapping Report](http://www.somec-project.eu/default.asp?page_id=565&name=Mapping%20Report)

## 5.6 Transfer of supervision, conditional release, and other probation sanctions under the Council of Europe Framework Decision 2008/947/JHA

### 5.6.1 Transfer of supervision

Framework Decision 2008/947/JHA (FD 947) allows for people convicted in one Member State to transfer to their home Member State to serve a probation measure or alternative sanction. It is a voluntary agreement and can include forms of probation supervision and conditional release and these are considered the most pertinent to SOMEK issues. The rationale for such transfer provision is to facilitate the social rehabilitation of offenders, but the protection of victims is also seen to underpin FD 947 (see ISTEP, pages 4 and 7).<sup>74</sup>

In addition, the ISTEP project noted the slow progress of implementing FD 947, and barriers to its implementation including: low numbers of eligible persons, the lack of priority accorded to it by Member States, and the lengthy transfer arrangements (p. 12).<sup>75</sup> For the SOMEK project, respondents from offender management services were asked about their experience of using FD 947 to facilitate transfer of supervision or conditional release for serious violent or sexual offenders, and findings largely confirmed those presented by ISTEP. It should be noted that FD 947 does not apply to deportation.<sup>76</sup>

Ten offender management respondents were apparently aware of FD 947 for the transfer of supervision across Member States, (one of these being a legal specialist), but few had any direct experience of actually using this to transfer the supervision of an offender.<sup>77</sup> The respondents largely represented Member States who have implemented the directive, and who have an operational imperative to do so because of shared land borders and/or migratory patterns of offenders most often for employment opportunities. A further seventeen respondents were either vaguely aware of the existence of FD 947 or simply had no apparent knowledge. This in part reflects the current patchy implementation of FD 947 by

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<sup>74</sup> ISTEP-Implementation of Support for the Transfer of European Probation Sentences. Available at: [http://www.probation-transfers.eu/uploaded\\_files/ISTEP\\_Handbook\\_EN.pdf](http://www.probation-transfers.eu/uploaded_files/ISTEP_Handbook_EN.pdf), accessed June 5<sup>th</sup> 2014.

<sup>75</sup> See also: Anton van Kalmthout (2013) Framework Directive 947/2008 JHA: practical aspects to its implementation. Available at: [http://www.cepprobation.org/uploaded\\_files/DUTT-Final-Conference-Anton-van-Kalmthout.pdf](http://www.cepprobation.org/uploaded_files/DUTT-Final-Conference-Anton-van-Kalmthout.pdf); accessed October 23<sup>rd</sup> 2014.

<sup>76</sup> Although some Member States may apply for a deportation order after the transfer of an offender under 947.

<sup>77</sup> FD 947 is not expected to generate large numbers anyway; and is mostly used by Member States with common borders, e.g. Belgium and The Netherlands, see Leo Tigges 'Implementing FD 947: the Dutch approach'. Conference Mutual Recognition and Transfer of Criminal Judgements. Malaga May 28<sup>th</sup>, 2010. Available at: [http://www.cepprobation.org/uploaded\\_files/Leo%20Tigges.pdf](http://www.cepprobation.org/uploaded_files/Leo%20Tigges.pdf); accessed October 23<sup>rd</sup> 2014.



Member States, with the Commission only receiving notification of transposition<sup>78</sup> by DK and FI by the implementation date; and from AT, BE, BG, CZ, HR, HU, LV, NL, PL, RO, SI and SK after the implementation date, leaving fourteen states still to notify.<sup>79</sup> This means the position on transfer of supervision arrangements across Member States is uneven, with FD 947 potentially under used, and in some Member States either not transposed, or with staff unaware of the arrangement and failing to use it.

The size of a Member State and/or its Probation agency and varying resourcing levels across Member States also creates challenges to the consistent use of FD 947. FD 947 was originally intended for those persons transferring back permanently to a home country, and in the case of SOMEK offenders this may not be the case. Circumstances such as home nationals wishing to travel abroad for employment or leisure, without having established family and community links are not covered by these transfer provisions. In some instances, SOMEK type offenders are crossing a border for a short period of time (for work, or holidays), or routinely crossing a border for employment and then returning home again.<sup>80</sup> In these instances, use of FD 947 would not be suitable and is unlikely to facilitate adequate and timely information sharing.<sup>81</sup> This varied picture was discussed at the task group events, with some Member States expressing a clear frustration that a number of other EU countries had not transposed the FD 947 directive, albeit recognising the challenges of doing so, and readily refused any formal or indeed voluntary transfer arrangement requests. This experience included all types of offenders and was not particular to requests to transfer serious violent or sexual offenders.

The following illustrates good practice examples in facilitating the transfer of supervision.

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<sup>78</sup> That is notification that a Member State has transposed or fully implemented an EU Framework Directive. Infringement proceedings may be taken by the EU on MSs who have not implemented FD 947 by 1<sup>st</sup> December 2014.

<sup>79</sup> Report from the Commission to the European Council and the Parliament on the implementation by Member States on Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA on the mutual recognition of judicial decisions on custodial sentences or measures involving deprivation of liberty, on probation decisions and alternative sanctions and on supervision measures as an alternative to provisional detention, February 2014. Available at: <http://db.eurocrim.org/db/en/doc/2032.pdf>; accessed June 5<sup>th</sup> 2014.

<sup>80</sup> For example in the case of Northern Ireland and the Republic of Ireland; Gibraltar and Spain; Spain and Portugal, and the Nordic States.

<sup>81</sup> <http://www.probation-transfers.eu/> provides practical information on transfers.



1. A Member State operates FD 947 through a senior Probation Service manager who quality assures that case papers and information on the offender meet particular quality standards prior to the official transfer to another Member State. This process ensures consistency that appropriate procedures are followed, and that importantly all pertinent information about the offender is passed on. In addition, the process ensures that any restrictions, for example on travel or residency are adhered to, and that issues of compliance with supervision are fully considered. This provision of this information aids the receiving jurisdiction to assess risk and to make appropriate case management decisions. This Member State was dealing with approximately 20-25 cases per year.
2. A Member State operates all transfer of supervision to another jurisdiction via an International Desk, providing a single point of contact for all other Member States. As with example one, this was seen as important to ensure standards and consistency in information exchange both in sending cases to another jurisdiction, but also in receiving cases.

The information templates provided for probation transfers helpfully cover social history and risk (annex 4), and cover risk of reoffending factors for violent or sexual offending.<sup>82</sup> This could form the basis of information exchange between probation services across the EU on serious violent or sexual offenders. With some adaptation and additions to the offence list on pages 69-70 to capture those most pertinent to SOMEK offenders, the inclusion of victim targeting information, modus operandi, protective factors, and required risk management measures a standardised package of information could be achieved.<sup>83</sup>

There are also outstanding issues and problems in the equivalence of sentences/sanctions across Member States,<sup>84</sup> including conditional release/licence.<sup>85</sup> If these are not also

<sup>82</sup> See: [http://www.probationtransfers.eu/uploaded\\_files/ISTEP\\_Handbook\\_EN.pdf](http://www.probationtransfers.eu/uploaded_files/ISTEP_Handbook_EN.pdf), pp.64-74, especially pp.68-74.

<sup>83</sup> See SOMEK guidance for OM and LE personnel, available at: [http://www.somek-project.eu/default.asp?page\\_id=577&name=Practitioners\\_Guidance](http://www.somek-project.eu/default.asp?page_id=577&name=Practitioners_Guidance)

<sup>84</sup> See: Morgenstern, C. (2009) European Initiatives for Harmonization and Minimum Standards in the Field of Community Sanctions and Measures. *European Probation Journal* 1 (2) 128-141; and van Zyl Smit, D., Snacken, S. and Hayes, D. (2014 forthcoming) One cannot legislate kindness: Ambiguities in European legal instruments on non-custodial sanctions. *Punishment and Society*, forthcoming.

<sup>85</sup> It should also be noted that conditional release does not necessarily imply post release supervision, this can vary across Member States, and the type of restrictions and conditions applied to such licences also varies. See: Council of the European Union, Questionnaire on the practical implementation of Council Framework Decision 2008/947/JHA November 2008 on the application and principle of mutual recognition to the judgements and probation decisions with a view to the supervision of probation measures and alternative sanctions- Summary of the answers by delegations in reply to the questionnaire, pp: 4-6. Available at: <http://db.eurocrim.org/db/en/doc/1375.pdf>; accessed October 23<sup>rd</sup> 2014.

addressed then FD 947 will have limited impact on the management of mobile serious violent or sexual offenders.

Information exchange outside of a formal transfer of supervision is potentially more problematic. A number of Member States facing an operational need to exchange information have tackled this through bilateral agreements and a memorandum of understanding, although this predominantly facilitates information sharing between police services and not offender management/probation services.<sup>86</sup> Such agreements tend to:

- Give permission to operational personnel to exchange information within well-defined parameters.
- Limit the use of information exchange and the use of information obtained.
- Define the limits and boundaries of confidentiality.
- Define clearly the subjects of such information exchange.
- Define the purposes of information exchange.
- Outline the processes, mechanisms, systems and personnel for information exchange.
- Clarify the status of the agreement, and relationship to other legal instruments and legal acts.
- Provide a system and timeline to review the agreement.
- Are signed and endorsed at a sufficient level of seniority.

Whilst these agreements are effective for Member States with shared borders and form a rational starting point where there is a pressing operational need, they do not necessarily offer a consistent, EU wide approach. They can often require a common language, and justice systems which share a strongly compatible approach to sanctions and offence definitions. There also needs to be mutual trust at both policy and practice level.

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<sup>86</sup> For example the Memorandum of Understanding between Northern Ireland and the Republic of Ireland allowing for cross border information exchange between police and probation services on those sex offenders who move across their shared land border. This has extended to regular information exchange on cases of concern, and has involved joint training on, and joint adoption of, risk assessment methods. For a discussion on how this agreement works see Thomas, T. (2010) European developments in sex offender registration and monitoring in *European Journal of Crime, Criminal Law and Criminal Justice* 18 Eur.j.Crime Crim l. and Crim just.403.

See also Department of Justice and Equality for Republic of Ireland, Bilateral Agreement of cooperation between Ireland and Romania in combating serious crime (2013) accessed at: <http://www.justice.ie/en/JELR/Pages/PR13000011>.

### 5.6.2 Conditional release

Seven Member States described varying forms of conditional release, parole or protective supervision at the end of a custodial component of a sentence, specifically for serious violent or sexual offenders. One Member State had developed specific legislation for serious violent or sexual offenders including conditional release on all sentences of four years custody or more. In three Member States post custody licence had to be imposed at point of sentence, with one of these Member States able to impose post custody licence of up to ten years length if the risk warranted it. In another Member State all prisoners were subject to a one year period of post-custody licence. One Member State had licence conditions but for sex offenders only, and one Member State used 'protective supervision' upon release if the level of risk warranted it. Of these seven Member States five also described post licence monitoring through the use of sex offender registers, or less formally through police intelligence systems. Other Member States did not describe post custody provision for serious violent or sexual offenders,<sup>87</sup> with monitoring and supervision largely ending at the end of a formal sanction. One respondent stated that once a custodial sentence is completed the individual is a free citizen not subject to any further controls or restrictions. In these circumstances the potential for active monitoring across EU borders is limited.

## 5.7 Monitoring the movement of serious violent or sexual offenders

Section four examined the extent to which law enforcement personnel actively engage in an exchange of criminality information on violent or sexual offenders who are thought to be mobile across the EU community, but where there is no current penal sanction or pending investigation. The data in section four indicates that fifteen different Member States agreed in principle to the need for proactive/preventative information exchanges on serious violent or sexual offenders, with only five Member States able to describe a process where the need to do so was actively determined on a systematic basis, and there is no data to confirm how often this actually occurs. The mechanisms used to exchange criminality information across EU borders were also discussed and the difficulties in identifying which offenders would travel, when and to where were also noted.

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<sup>87</sup> Based on responses from Offender Management/Probation personnel. The figure may not necessarily be an accurate picture of the conditional release/liberty picture across the EU although it was assumed that personnel were at a sufficient position of seniority and with sufficient knowledge to speak on the position in their Member State.

It was difficult to discern from the data how much active monitoring takes place in the receiving Member State once information has been received (this is discussed in more detail in Section 6). This situation makes the active monitoring of serious violent or sexual offenders across all Member States difficult to achieve, with the potential for further criminality and victimisation.<sup>88</sup> The length of time for holding criminal records varies, some Member States endorse the restoration of full rights of citizenship, privacy and liberty upon the completion of a formal sanction in all cases and the differing availability and use of conditional release/conditional liberty is also problematic.

However the following case studies illustrate how proactive information and monitoring can take place and the positive crime prevention and victim safety outcomes that can be achieved.

**Case study: Example of Intelligence Sharing on travelling sexual offender-country to country via Interpol**

- Intelligence was received from Interpol that subject A was due to travel to City B in Country Y in order to meet up with a 15 year old boy, his intention to engage in sexual activity. Subject A was a home national of Country X, known to law enforcement there for possession of images of illegal content and for suspicion of sexual acts against children.
- There was no legal basis for Country X to act so intelligence information was disseminated via Interpol and police assistance sought from Country Y. When subject A arrived at the airport in Country Y, he was detained, searched and as a result, a number of items were found including a hotel booking for him and a male at a hotel in City B.

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<sup>88</sup> The case of the murder of Moira Jones by Marek Harcar in Glasgow 2008. Harcar was originally from Slovakia, where he had 13 previous convictions, 4 for violence. Scottish Police were unaware of his potential and he entered Scotland unmonitored. Also the case of Antonin Novak who was known in Slovakia for a history of serious sexual offending who moved to the Czech Republic and his history was unknown to them. He was subsequently convicted for sexually assaulting and murdering a 9 year old boy.

- Subject A was questioned regarding the hotel booking and admitted that the named male was a 15 year old boy that he had conversed with over the internet for approximately three to four weeks. Subject A stated that he had intended to meet up with the boy but was adamant that he did not intend to engage in sexual activity with him. Subject A could not explain with any clarity why he had chosen to include the 15 year old male on the hotel booking. He was subsequently arrested on suspicion of attempting to meet a child under 16 for sexual activity.
- On arrest Subject A provided a home address in Country X. The investigating police at City B requested that Country X police conduct a search at the address (achieved via an International Letter of Request via Judicial channels), and information on previous convictions were requested and provided, giving evidence of a history of sexual offences against children.
- Subject A was sentenced in Country Y and received a 32 month term of imprisonment and was then deported back to Country X. He was then made subject to a restrictive requirement which could be applied under relevant legislation in Country X as a result of a conviction for inciting a male child under 16 to engage in sexual activity.

**Good practice points:**

- Appropriate use of intelligence sharing via Interpol.
- An International Letter of Request via Judicial channels was used to secure a search for further evidence at his home residence.

**Positive outcome/impact:**

- Use of intelligence enabled City B police to take action at point of entry; the securing of a conviction and sex offender restrictions and the prevention of further offences.

This example indicates what can be achieved with appropriate sharing of relevant information when a serious sexual offender against children travels and grooms other children in a receiving Member State.

**Case study: Example of active monitoring and tracking between two countries that have a Memorandum of Understanding.**

Subject X - Male born in Country A, has an extensive history of sexual offending against children. Currently subject to restrictive condition requirements in country A. Jointly risk assessed by criminal justice agencies as posing a high risk of harm and high likelihood of committing further offences

Since his release from prison in 2003, he failed to comply with his restrictive condition requirements. The Police applied for a civil court order which gave them additional powers of monitoring and which prevented X leaving his local police district command unit.

Countries A and B share a land border and the movement of citizens across the border is frequent. When the offender failed to comply with the civil court order Country A shared information with the police service of Country B. This information included photographs of the defendant and vehicles he had access to.

The offender had been working in Country B and was detained by a Country B police patrol. Country A was able to prosecute the defendant for being in breach of the civil court order. X was sentenced to three years imprisonment.

On the last occasion when X went missing in 2008, he was better prepared. He travelled to another European Country on false documents where he bought an apartment.

Under a public disclosure policy, his details were circulated as wanted in both Countries A and B, with information disseminated via national television. This resulted in a member of the public who owned the apartment in the European Country contacting the police in Country A to report the offender's whereabouts.

The offender returned to Country B, and was found sleeping rough before being arrested for further offences in their jurisdiction. After he served his sentence in Country B, X returned to Country A and was convicted for further offences in that jurisdiction.

**Good practice points:**

- An existing memorandum of understanding enabled prompt exchange of information between Countries A and B.
- Continued information exchange and tracking, plus active dissemination of offender details.
- Use of media to achieve wider disclosure and gain useful information leading to current whereabouts and arrest.

**Positive outcome/impact:**

- Offender found and arrested.
- Further crimes prevented.

**5.7.1 Dedicated alerts where exact details of travel are unknown**

These cases largely illustrate scenarios where the travel intentions and destinations of the offender are known or can be discerned. Such information will not be known in all cases, and in some instances offenders can and do travel quickly across several Member States. Coupled with the lack of post custody supervision in many Member States, it is very difficult to actively monitor the movement of many such offenders across EU borders. The call made by a number of law enforcement respondents for a dedicated alert system becomes more persuasive in circumstances where the current whereabouts or ultimate destination of the offender are unknown, as previously discussed in section 4. Exploring the possibilities for amendments to the section 36b alerts currently possible under Schengen SIS II for example offers some strong potential for improving the effectiveness of cross border management of serious violent or sexual offenders.

**5.8 Deportation**

The interview data indicated that offender management services are not routinely provided with information about their own nationals who are deported from other Member States as a result of the commission of serious violent or sexual offences. Even where serving prisoners

are deported under Framework Decision 909,<sup>89</sup> full conviction data may not accompany the individual. Offender management personnel are also not regularly party to the provision of information when foreign nationals who have committed serious offences in their country are being deported back to their home country. Six respondents from six Member States were aware of the existence of deportation arrangements. Of these, one Member State reported that they are not formally advised but learnt about this through their international volunteers. This Member State has an international probation team which engages their own local volunteers who visit offenders in prison in other EU Member States and establish release arrangements. These details are passed on to the international team who assist with resettlement and practical matters when the offender returns to the home Member State. However, as sentences are complete prior to the return of the deportee there is no legal mandate to supervise or assist. Two Member States had experience of notifications to probation, although these were not frequent, and it was more common for probation not to be informed, or to receive information only in a very few instances via their national police.

Knowledge and experience of deportation arrangements particularly relating to serious violent or sexual offenders also differed across law enforcement personnel. Fifteen law enforcement respondents had knowledge of deportation arrangements and information exchange procedures, although these varied in the type and route of the information exchange, for example utilising Embassy personnel, Interpol, Europol liaison officers, and notifications to national police. Only three Member States made any further assessment of the person, and described specific procedures to interview, assess or profile the offender particularly in those cases they defined as 'high risk'. It was not clear how often receiving information on a deportee was considered to be useful, or how often this was passed to regional police or offender management services in the offender's home location, or indeed how efficiently or frequently police and probation liaise over deportees.

One Member State suggested an EU wide register of Deported Persons which could be accessed by EU law enforcement and border control officers that could be stored through the Schengen SIS II system. A Member State receiving a large number of deported serious sexual offenders uses specialist police officers to meet such offenders on arrival and to conduct an initial risk assessment including the verification of onward address. The local police area is then informed and relevant information passed on.

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<sup>89</sup> Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.



The following case illustrates some of the current issues, good practice, and areas for improvement concerning the deportation of serious violent or sexual offenders. The case also illustrates the type of information that is most useful in facilitating the effective management of serious violent or sexual offenders; how Member States have to act on the information received; and that where disparities exist in terms of post custody supervision how gaps in the effective management of such offenders can occur.

### **Case study: Information sharing on deportation arrangements between Member States**

This case study concerns a sex offender, subject S, from Member State Y who was convicted in Member State X for a sexual offence, the rape of his two year old child and possession of child pornography. Subject S was sentenced to a term of imprisonment of four years.

After serving his sentence, S was deported back to his home Member State Y.

Prior to deportation, police in Member State X communicated their intentions to home Member State Y. The information was sent via SIENA (Europol) and the information included the date and time of deportation and the place and time of arrival in the home Member State.

Member State Y does not routinely take any measures on the basis of deportation information such as this. If the conviction occurred abroad, there is no legal framework in Member State Y that can serve as a starting point for risk management and monitoring of the offender.

### **Good Practice Points**

In this case, a supervised physical transfer of custody took place between the authorities of the country of conviction, X and the law enforcement authorities of the home Member State, Y. Subject S was accompanied by the authorities of Member State X in transit and the police of Member State Y received the offender on his arrival.

- An interview with the offender then took place by police authority Y to collect information on S's plans and intended place of residence.
- Although there was a lack of any legal basis for supervision in Member State Y, it was still viewed as necessary to monitor this individual.

### Areas for development

The information provided by country X was limited and covered only details about the current conviction. Relevant information about previous crimes, treatment and risk factors were not provided. This kind of information can be very useful in deciding what action is necessary in country Y.

- It is not known whether the police or other authorities in country X also shared information with authorities such as probation in country Y. It is important that there is a coordinated approach to international cooperation.

## 5.9 Future developments as identified by respondents

Nine offender management respondents described future development plans. These involved:

- The introduction of measures to enhance the assessment and supervision process (for example via a new risk assessment tool).
- The introduction of electronic monitoring.
- The development of aspects of practice (i.e. group work programmes for sex offenders).
- The development of preventative measures.
- Improving relations between probation and police in light of a recent serious incident.
- The passing of legalisation for lifelong supervision for serious violent or sexual offenders.
- The introduction of legal protocols including work to embed FD 947 into national practice.

However, the majority of respondents did not identify any plans within their Member State to develop practice or systems in this area of work.

Twenty offender management respondents representing fifteen Member States did identify some key issues for consideration by the SOMEK project:

These were clustered under broad topic areas:

Seven of the twenty respondents referred to the value of developing formal frameworks to facilitate cross-border monitoring and supervision. One suggestion was to have a 'Single Point of Contact' in each Member State for Law Enforcement and Offender Management. Two Member States expressed concern about the inadequacy of Information Technology systems to support such frameworks. One is a Member State with a formalised and well developed system for both in state and across border co-operation, and one is a smaller and more recently acceded Member State.

Eight respondents identified the need for attention to be given to professional practice, including raising the awareness of front-line offender management staff about what is possible, how mechanisms for exchange work and sharing and replicating good practice. For example the possible replication of the 'Safety House' multi-agency model could occur in other areas. The need for consistency across the EU community was recognised with a greater transferability of risk assessment language and methods (including a shared understanding of ECRIS codes and definitions of offending).

Six respondents mentioned ethical issues around the sentencing of offenders. This included perspectives which were sometimes perceived to be in conflict with each other, such as principles of public protection over rehabilitation, the human rights and civil liberties of (ex) offenders and potential victims.

## **5.10 Summary**

Some form of monitoring for serious violent or sexual offenders serving part of their sentence in the community is widespread, and restrictions of various forms whilst subject to supervision are common. In some instances such provisions only apply to sexual offenders, and violent offenders appear to have less priority. A significant proportion of Member States can only impose additional restrictions or post-custody requirements at the sentencing stage, and later additions would be viewed as additional punishment and legally or morally undesirable. Travel bans are not widely endorsed as being practical or desirable and in Member States where they are available they remain underused.

Release that is not conditional, or serious violent or sexual offenders who have completed a formal sanction/sentence, appear to pose particular problems, with most Member States not engaging in any preventative supervision or monitoring. In these circumstances many Member States are reluctant to, or cannot, exchange information with other Member States. National levels of monitoring will have ceased, or will be provided on an informal basis only, often by law enforcement personnel. Changes to this situation would require some Member States to make changes to their penal code (one Member State is already doing this) and the

incentive for doing so, that is increasing the protection of EU citizens from serious harm is outweighed in some Member States by concerns for the rights of citizenship for the offender who has completed their sentence. This concern can be addressed however via the adoption of more consistent EU wide strategies for identifying the most serious violent or sexual offenders, where the level of risk posed is defensibly assessed (see section 3) and any justification for failing to respond severely weakened.

The majority of respondents appear to see the importance of some inter-agency co-operation, although only three Member States have significantly developed formal structures and procedures. Although there is evidence of some Member States developing formal arrangements,<sup>90</sup> for most it is an area of development. Whilst the volume of serious violent or sexual offenders in some Member States is low, smaller scale collaborative working is still likely to provide benefits in terms of information exchange, joint assessment and management.

Few Member States appear to be using FD 947 for formal transfer of supervision arrangements. However, there are good practice examples of Member States using an International Desk, Single Points of Contact, with senior management quality assurance to improve the use and implementation of FD 947. If consistency in the processes for monitoring and conditional release restrictions were more widespread, it may make it more likely that information is exchanged on such offenders, not least because this would be seen as both legally and ethically justified.

There is some appetite for frameworks to support more formal cross-border co-operation on monitoring and information exchange on those serious violent and sexual offenders subject to supervision or post custody licence. There is a degree of information exchange on those offenders who may travel, or who have travelled and a range of mechanisms are utilised. However the extent to which Member States are prepared to exchange information on persons who are not currently subject to any form of sanction, in order to prevent crime is less apparent.

Offender management personnel were largely unaware of deportation arrangements. Fifteen Member States had systems in place largely operated by police personnel. One Member State suggested an EU –wide register of Deported Persons which could be accessed by EU law enforcement and border control officers. Case study examples have indicated the standard information which receiving states would find essential to ensure the effective management of the individual.

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<sup>90</sup> During the SOMEK project Latvia for example initiated Multi Agency Public Protection Arrangements for high risk offenders.

## **5.11 Moving forward in the EU approach to monitoring, managing and exchanging information on serious violent or sexual offenders**

Achieving greater consistencies across the EU community for conditional release, supervision and restrictive measures for serious violent or sexual offenders will greatly assist cross border information exchange and has the potential to increase the implementation and use of FD 947.

Achieving a standardised package of information on serious violent or sexual offenders is also required, to be utilised for the various scenarios in which information exchanges across EU borders are necessary including deportation, the transfer of supervision and monitoring processes and proactive /preventative exchanges. This should include a comprehensive and defensible risk assessment (see section 3) details of the current offence, previous convictions, modus operandi, victim targeting, treatment and interventions and previous responses to them, relapse risk, risk factors, protective factors, and measures required to manage the risk posed by the individual (see Appendix 3).

Single Points of Contact (SPOCS) for offender management and law enforcement personnel should be established in all Member States and this inter agency communication and dissemination approach endorsed by the existing EU DAPIX SPOC working groups as highlighted previously.

The quality of the information received in particular is a poignant factor for proactive/preventative exchanges of information which impacts significantly on the receiving Member State's ability to respond effectively. This issue is addressed further in section 6 which follows.



## **Section 6 - Responding to information received on serious violent or sexual offenders travelling across EU borders**

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### **6.1 Introduction**

This section examines the capacity and commitment of Member States to respond in a proactive manner to incoming information about an EU foreign national, who is considered to be a serious violent or sexual offender, intending to travel to their Home Member State. Whilst the analysis draws mainly upon responses from law enforcement personnel, some important connections are made with the offender management data and joint responsibilities for effective action when information on a serious violent or sexual offender entering a Member State is received (see also section 5).

The observations made here are primarily concerned with how Member States respond to proactive/preventative exchanges of criminality information from another Member State on known individuals where there may be no current formal sanction or criminal proceedings, but where a serious level of potential harm is identified.

### **6.2 Responding to incoming information**

From a total of thirty-seven interviews, twenty-four respondents representing eighteen Member States clearly indicated that incoming notifications of mobile serious violent or sexual offenders were received by their Home Member State. The methods by which such communications occurred varied, highlighting similar patterns to those discussed in section four, with different Member States favouring particular mechanisms such as the various Interpol dissemination processes and contact made via the Europol National Units (ENU) and Liaison Officers. Distinctions were not always clear in the interview responses made between the receipt of targeted exchanges, where the specific travel intentions of the serious violent or sexual offender were known and the use of more generalised alerts,<sup>91</sup> where the whereabouts of the individual may not be apparent, but where there was good reason to believe that they were mobile across the EU community.

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<sup>91</sup> Such as Interpol Green Notices, Schengen SIS II Article 36b alerts.

Of the twenty-four respondents who stated that they received proactive/preventative exchanges of information, for four of the respondents this occurred as a part of a broader regional bi-lateral/multi-lateral police cooperation network with neighbouring Member States.<sup>92</sup> Ten respondents stated that proactive/preventative exchanges and alerts were otherwise most commonly received from just a very small number of Member States<sup>93</sup> and outside of the EU from the United States of America.

Eight respondents from eight Member States had previously clarified that preventative forms of information exchange on violent or sexual offenders would not be permissible in their Member State under any circumstances and they could not volunteer any information of this type to other Member States on their own home nationals (see section 4). For all eight of these respondents this followed a basic principle that once a formal sanction had been completed, the Home Member State had no legal right to continue to monitor an individual's whereabouts and they would be considered to be a free citizen, with all of the rights to privacy and data protection that this status afforded. However, despite this stated position in relation to their own national citizens, five of these eight respondents advised that they would still seek to respond as effectively as possible to any incoming information of this nature from other Member States.

One respondent stated that whilst the Home Member State's national legal restrictions prevented law enforcement agencies from sharing information on their own serious violent or sexual offenders, there were good examples of proactive/preventative responses to incoming information of this nature. An example was provided:

#### **Case study**

A professional businessman was arriving from X to give a presentation in Country Y. He was a known sex offender with convictions for raping a 14 year old male. His supervising probation officer and the police in X were concerned that his trip to Y presented a scenario, where he was in a position of trust and others were unaware of his potential to cause harm to young people, who may attend his presentation. The agencies in X communicated this to the law enforcement agencies in Y via a targeted

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<sup>92</sup> Only one example was provided of a bi-lateral arrangement between Member States which had been set up to specifically address the transient activity of serious violent or sexual offenders. Other agreements had been established to address a variety of other cross border issues of criminality. Exchanges of information on violent or sexual offenders may occur as part of some of these regional relationships, but were not common.

<sup>93</sup> One respondent advised that occasional exchanges were received most notably from three Member States who were known to have national sex offender register systems.



Interpol communication providing details of the individual's previous convictions, his pattern of offending, current circumstances, travel and employment details. The local police in Y, in the town where the man would be giving his presentation were provided with all of these details. The Y police met the man from the aeroplane upon his arrival to talk with him and advise him that they were aware of his offending history, current whereabouts and activities. The man gave his presentation and left country Y without further incident.

There were no national public protection frameworks or legal parameters which permitted any form of restrictions to be imposed on the individual in Member State Y and disclosures of his offending could not be made to third parties such as the organisation who had asked him to do the presentation. However a proactive stance was still taken, albeit under more general policing provisions, which although limited may still have served as an inhibitor to the offender.

Four respondents from four different Member States advised that national laws would not permit them to take any form of action upon receiving information on a serious violent or sexual offender arriving in their Home Member State, if the offender was yet to commit a further offence and without any significant evidence of their intention to do so.<sup>94</sup> However the case example detailed above highlights a contrasting perspective. Although the receiving Member State was operating within tight national legal restrictions, the appropriate, feasible and legal responses that could be made to reduce the possibility of further harm occurring were still considered and applied.

### 6.3 Different types of response

In terms of the range of responses made upon the receipt of proactive/preventative incoming information, of the twenty four interview respondents who advised that some form of action would occur, the following actions were cited. Several respondents discussed more than one possibility, dependent primarily on the quality and nature of the information provided. As a result, individual respondents may be included on more than one occasion in the aggregated figures. In nearly all cases, law enforcement respondents commented upon the initial actions to be taken, rather than any assessment or application of longer term measures required to

<sup>94</sup> See section four where the need for 'concrete evidence' as a pre requisite for proactive/preventative exchanges by many law enforcement respondents is discussed in more detail. Only five Member States advised that they would take a proactive stance to exchange information where a comprehensive assessment of the imminent harm posed by the offender was the main criteria, rather than requiring other necessities to be established such as details of the next known target/victim.

manage the harm posed by the serious violent or sexual offender in the new host Member State.

■ **Assessing the information and responding on a case by case basis (11)**

A variety of actions may follow the receipt of incoming information depending upon the issues of public protection raised and the appropriate legal parameters. These actions may comprise prevention of entry at an EU border (six respondents, from five Member States); or meeting with the offender to ascertain his/her plans and make him/her aware of the police knowledge of his/her offending (eleven respondents, from eight Member States); recording information on a police database and making an initial assessment of any further necessary action required such as dissemination to a local police force area.

Examples were also provided that indicated that ongoing liaison with the notifying Member State would occur, but that responding actions were also restrained by the national legal frameworks of the receiving Member State on issues such as disclosure.

One respondent gave an example of an offender from Z who commenced a relationship with a Home National female who had a child. He was a known child sex offender in his Home Member State, but not subject to any current penal sanction or investigation. Police were able to speak to him, but the legal parameters in the host Member State meant that they could not disclose details of his offending to his new partner.

■ **Storing information, local dissemination, low level surveillance (8)**

Recording the information on a police database, ensuring local police have the information, resulting in a low level monitoring of the offender(although understandings of what this might actually entail may differ), responding to any additional information regarding a new alleged offence in the receiving Member State.

■ **Recording the information on a police data base only, no other action taken (3)**

Three respondents described a single reactionary approach, where they were unable to act until a further crime which matched the offender's profile and modus operandi was suspected. They would then use the information where appropriate as part of their new investigation enquiries. The exchange of information was therefore seen as a tool to assist in the detection of a perpetrator of a crime, rather than to prevent a serious crime occurring in the first place.

Two respondents advised that they were from small Member States with limited reputations as travel destinations resulting in the receipt of such incoming information being very rare. However one of them suggested that the fact that this was the case resulted in their law enforcement agencies being able to respond effectively to such notifications, despite the lack of any formal legal framework or bi-lateral negotiations for doing so and with a limited strain on their resources. This respondent advised that resourcing a more elaborate infrastructure to manage such information exchanges and responses would have different resource implications.

Task group case study discussions with law enforcement personnel resulted in a similar range of reactions:

- Those who considered that they had robust structures to appropriately assess and proactively respond to incoming information.
- Those who considered that national laws prohibited any form of response to such an exchange.
- Those who thought that whilst there were legal limitations within their national structures, where issues of public safety were paramount there were ways of negotiating these national legal issues and ensuring some form of appropriate action was taken.

Many participants who stated the latter view often also advocated further developments of more formal arrangements for managing serious violent or sexual offenders at a national level. Part of the reasoning for this was to ensure that law enforcement personnel felt that there were legal permissions to respond proactively, which would limit any criticism of the legitimacy of their actions.

Sharing information across EU borders based on a defensible assessment of the threat posed to public safety by an individual or group is already legitimized by a number of EU legal framework instruments.<sup>95</sup> Where there was a greater understanding of this from interview respondents and task group participants who were more familiar with these EU parameters, the concept of proactive/preventative exchange met with far less anxiety and opposition. However, reinforcing this “permission” through national legal provisions was also

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<sup>95</sup> Such as: Swedish Framework Decision 2006/960/JHA, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 20 April 2010 – Delivering an area of freedom, security and justice for Europe’s citizens – Action Plan Implementing the Stockholm Programme [COM(2010) 171 final, Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, Draft updated Catalogue of Recommendations for the correct application of the Schengen Acquis and Best practices: Police cooperation 15785/1/10.Council of European Union. Chp 3 Art 40 “The Spontaneous exchange of information and intelligence in criminal matters and in public order and security”.

advocated,<sup>96</sup> ensuring that a balance with data protection, privacy and human rights issues was also seen to be formally addressed within each Member State and in accordance with the governance principles of the exchange mechanisms themselves.<sup>97</sup>

## 6.4 Factors which limit the capacity of the receiving Member State to respond effectively to incoming information

The benefits of proactive/preventative exchanges of information have been previously discussed in section 4 and were described by five respondents to be justified on the grounds of preventing crimes and honouring the rights of victims to be protected from harm. Also, as previously stated, there are several EU legal framework provisions which make this permissible, including the Swedish Framework decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States.

The primary factors which are considered to impact on the effectiveness of the existing mechanisms for all forms of criminality information exchange across the EU community have also been well rehearsed elsewhere in this report (section 4).

The factors which were re-iterated by law enforcement respondents as being increasingly important to ensure appropriate responses to incoming proactive/preventative information could also be made were as follows:

- **The quality of the information received** - if a receiving Member State is to respond appropriately they need as comprehensive a picture as possible of the situation, including where at all possible:
  - Specific details of likely travel dates and destinations.
  - The history and pattern of offending, which may indicate the imminence of its further occurrence.
  - The offender's modus operandi and local connections.

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<sup>96</sup> Five respondents advocated the development of some form of sex offender register at a national level in their Member State. Eight respondents considered that developments were needed at a national level to improve multi-agency cooperation, between police, offender management and judicial departments to ensure the effective joint identification and management of violent or sexual offenders.

<sup>97</sup> All existing mechanisms for information exchange between EU law enforcement personnel have their own forms of governance to ensure data protection standards are maintained. For SIS II see the Summary of governing instruments for SIS II [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/il0010\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/il0010_en.htm) [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/114569\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/114569_en.htm). For Interpol- The Commission for the Control of Interpol's Files at <http://www.interpol.int/About-INTERPOL/Structure-and-governance>. And Europol the Data Protection officer and joint supervisory <https://www.europol.europa.eu/content/page/management-147>

- Where details were vague, respondents advised that it should not be assumed that the receiving Member State would know what action was expected or had the resources to check this further. (4)

#### ■ **Targeted communication**

Three respondents stated that where they received regular preventative/proactive information exchanges from particular Member States, that a number of them were not effectively targeted and focused in terms of there being a full assessment of the potential harm posed, the pattern of travel and destination which was likely to be pursued and the desired outcomes of the communication.

#### ■ **Volume of communications received**

Proactive/preventative communications should be reserved for the most serious violent or sexual offenders only. During task group discussions there were some concerns raised that there was a danger of overloading systems with details of other lower level violent or sexual offenders “just in case” they travelled and committed a serious offence. This approach could result in receiving Member States becoming overwhelmed with the volume of information and the number of notifications being received, many of which they were then unable to act upon because of the poor quality of the information (3).

If a large volume of inappropriate exchanges were made, there were also resource implications for a receiving Member State, making it difficult to manage and potentially resulting in those cases which should be considered a priority being overlooked.

#### ■ **The timeliness of the information**

Four respondents advised that details were often sent too late for the receiving Member State to do anything effective with them in terms of public protection, the offender would already have moved on, or have disappeared. The capacity to travel very quickly across a number of Member States with shared land borders necessitates an organised and prompt response to information sharing on the mobility of the offender, as well as the harm they posed.

#### ■ **Varying national laws and Member State perspectives on data protection, privacy and disclosure.**

In addition to the four previously identified respondents who advised that their own Member States would not be able to respond to a proactive/preventative information exchange, there were eight respondents from seven other Member States who considered that varying

national legal frameworks were the main causes of ineffective communication and poor responses across EU borders. Even where a good quality assessment of the harm posed by the offender, details of their prior history and evidence of their mobility were available, frustrations were expressed that some other receiving Member States would then advise that they were unable to respond in a proactive manner as there were no legal provisions nationally which allowed them to do so.

■ **A lack of further dissemination and information sharing at a national level.**

Concerns regarding the lack of any further dissemination at a national level of incoming information on violent or sexual offenders received from other EU Member States are discussed in more detail in section four. These earlier discussions focus primarily on observations from offender management respondents and relate more often to the provision of conviction data for sentencing courts and/or offender management personnel responsible for assessment and supervision processes.

Task group case study discussions highlighted examples where international police bureaux had received information relating to foreign EU convictions, but had then failed to pass this on to judicial personnel, offender management staff and prison staff who were in contact with the individual concerned. There were clear examples provided of where other agencies such as this would have benefitted from acquiring the information and indeed were legally entitled to have it. However they would often only obtain it following formal requests for access at a national level which were time consuming.

Where the example of information exchange was of a proactive/preventative nature alone and there were no current sanctions or criminal proceedings, the majority of law enforcement respondents saw the responsibility for exchanging information and responding to it, to rest primarily with law enforcement personnel. Only two respondents stated that incoming information on foreign EU nationals who were serious violent or sexual offenders and arriving, or already residing in their Home Member State, would be assessed and incorporated as appropriate into a national multi-agency public protection procedure. This would then result in the information being shared with offender management personnel as a matter of routine.

## **6.5 Improving the capacity and commitment of Member States to respond to incoming information**

### **6.5.1 A harmonised approach**

Nine respondents advocated the development of a harmonised approach across the EU in relation to proactive/preventative information exchanges on violent or sexual offenders, with improved communication and joint understandings of what should happen when a serious violent or sexual offender is travelling across the EU community. These respondents promoted that the varied approaches to making such exchanges which currently existed needed to be addressed with a standardisation and clarity as to:

- What information is required?
- How should it be transmitted?
- How should receiving Member States respond?

Six of these nine respondents supported a single choice of exchange mechanism and a streamlined approach to proactive/preventative exchanges of information about such offenders.

### **6.5.2 Reserved for the most serious offenders and prioritised appropriately**

Ten respondents from nine different Member States advised that improvements were also needed at a national level in their own Home Member States. This should include the establishment of effective processes for identifying, assessing and monitoring violent or sexual offenders in the first instance, sharing information across the EU when appropriate to do so and responding appropriately to incoming information and the effective management of serious violent or sexual offenders arriving from other Member States.

For many Member States, this necessitates a move from a reactionary approach to any incoming information to a preventative stance which is not yet fully established or endorsed. It also requires a coordinated national approach to information sharing between law enforcement, judicial and offender management personnel again which is at varying stages of development across the EU. However upon the receipt of prioritised information<sup>98</sup> of an

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<sup>98</sup> Urgent cases as referred to in Article 4 of Framework Decision 2006/960/JHA can be understood to mean any situation during which the fact of obtaining information will: - prevent a risk of death or harm to persons or serious damage to property; - result in, or terminate, a decision involving deprivation of liberty. Examples of such situations would be: - abductions and hostage-takings; - the risk that a serious offence will be committed or repeated; - the disappearance of



agreed required standard, the responsibility of receiving Member States to take appropriate preventative action is far clearer and more difficult to avoid.

### 6.5.3 The accurate anticipation of travel

Restricting and monitoring travel was not always seen as a realistic or even a desirable prospect, however, strategies for improved communication and surveillance across borders might be pursued. Task group discussions highlighted that the management of serious violent or sexual offenders travelling across the EU was often not just the responsibility of two Member States, but could involve a number of countries during a short space of time, for example as an individual moved quickly across a number of land borders.<sup>99</sup> It is vital therefore that the dissemination of the information is targeted effectively, that is, it is sent to the right people at the right time, promptly establishing shared understandings of the potential harm posed and clarifying the importance of taking action, with a clear indication of what that might entail.

## 6.6 Summary

The effective response to proactive/preventative exchanges of information on violent or sexual offenders from other Member States arriving in other EU countries can be limited by the national legal frameworks of the receiving Member State. Guidance provided for the various mechanisms of exchange currently available<sup>100</sup> frequently locates any decision regarding a response to requests from other Member States and/or actions to be taken upon the receipt of incoming information firmly within the individual legal frameworks of every Member State. Therefore some clarity is required across the EU on how a proactive rather than reactionary stance is best achieved. Without this, incoming information can simply become intelligence data which is not acted upon until a further offence occurs and is therefore only used in a reactionary manner.

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minors, and the disappearance of adults giving cause for concern; - decisions relating to keeping a person in police custody, or remanding a suspect in custody or releasing a person; - the possible escape of a suspect in a serious case; - the need to obtain information at risk of imminent destruction. See - Guidelines on the implementation of Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union. Council of European Union 2010 9512/10 CRIMORG 90 ENFOPOL 125 ENFOCUSTOM 36 COMIX 346

<sup>99</sup> The case of Robert M. A Latvian citizen who moved to Germany - where he was convicted of offences of child pornography in 2003, receiving a prison sentence. He later moved to the Netherlands with his partner and acquired work both as a private child minder and with several child care organisations. He was convicted in 2010 of 69 offences of sexual assault against children. The Dutch authorities had not been aware of his conviction in Germany.

<sup>100</sup> Such as Schengen Catalogue 2010, Guidelines on the implementation of Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union. Council of European Union 2010 9512/10 CRIMORG 90 ENFOPOL 125 ENFOCUSTOM 36 COMIX 346.



Examples have been provided which highlight that where the communication has been targeted appropriately and is of a good quality, assigning resources to respond appropriately to the small number of information exchanges of this nature which some Member States are likely to receive is unlikely to be too onerous.

The quality and timeliness of the exchange are also important factors in maximising the capacity of a receiving Member State to respond effectively. Evidence that the offender is actually mobile is also a vital component, although this may not necessarily include knowledge of a destination address. It is recognised that serious violent or sexual offenders are relatively few in number and need to be appropriately identified in the first instance (see section 3).

A lack of appropriate assessment and targeting can result in cross border communication that is unfocused, the amount of data becomes unwieldy to manage and may perpetuate a perspective that such information sharing oversteps the variously held national principles of privacy and data protection.

Proactive/preventative exchanges of information on serious violent or sexual offenders should also be thought of as an ongoing dialogue between relevant Member States. Any information on ongoing travel should also be communicated and details of the harm posed by the offender forwarded promptly to any additional Member State partners as an offender's journey continues, particularly in the Schengen region for example. Serious violent or sexual offenders who have gone on to re-offend in another Member State have often travelled through various other Member States to get there and in some cases with the full knowledge of the law enforcement and judicial agencies of the countries concerned.

## **6.7 Moving forward and developing effective responses to incoming information**

Effective responses to incoming proactive/preventative information exchanges are those determined and assessed on a case by case basis, by knowledgeable personnel, who are in receipt of good quality information. Positive examples have been provided where the receiving Member State's response mirrors the process initiated by the sending Member State, in that an assessment is made and the according actions taken to ensure the prevention of crime and protection of the public. However it is the sending Member State's responsibility to ensure that the quality of the data provided enables this proactive response. A standardisation in the content and quality of the information package received, as described in section 5 (See appendix 3), is likely to facilitate a more proactive response to the various scenarios by which such exchanges may occur. This, coupled with developments

in the supervision and monitoring of serious violent or sexual offenders at a national level leads towards a whole systems approach, where an increase in safety of EU citizens is achieved.

## Section 7 - Conclusion and Recommendations

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### 7.1 ‘A whole systems approach’

Significant strides have been made over recent years in EU community law enforcement cooperation to address issues of organised crime such as human trafficking, child exploitation, terrorism and football hooliganism. However the “common interest” of protecting EU citizens from the single transient serious violent or sexual offender has not been so apparent. There have been a number of tragic examples that have exposed this weakness within EU policing, judicial and offender management functions. A serious violent or sexual offender has travelled to one Member State from another without any indication of the harm they pose being communicated to the receiving Member State and a further very serious crime has been committed. The priority that Member States afford to addressing this issue varies for a number of different reasons illustrated in the data collection for the SOMEc project and reinforced by supplementary reviews of the existing mechanisms for EU information exchange and effective practice in working with these types of offender (See SOMEc reports accessed via [http://www.somec-project.eu/default.asp?page\\_id=563](http://www.somec-project.eu/default.asp?page_id=563)).

EU law enforcement cooperation is relatively well established during the investigation of a current criminal matter. However processes for ensuring the effective transfer of supervision and the joint management of a serious violent or sexual offender travelling between EU Member States pose a greater challenge. Sharing information with offender management personnel is very rarely an integral part of the cross border information exchanges which do occur and the appropriate dissemination of received information at a national level is limited. The concept of continuing to monitor an offender who has completed their sentence has also met with some concern and is legally prohibited in some Member States. Nevertheless the SOMEc research has revealed examples of effective proactive/preventative exchanges and a recognition of the permissive EU framework<sup>101</sup> which enables such exchanges and alerts to occur.

In order to improve practice and increase safety overall from serious violent or sexual offenders who are mobile across the EU, a number of changes need to happen at both an

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<sup>101</sup> Swedish Framework Decision 2006/960/JHA, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 20 April 2010 – Delivering an area of freedom, security and justice for Europe's citizens – Action Plan Implementing the Stockholm Programme [COM(2010) 171 final, Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, Draft updated Catalogue of Recommendations for the correct application of the Schengen Acquis and Best practices: Police cooperation 15785/1/10.Council of European Union. Chp 3 Art 40 “The Spontaneous exchange of information and intelligence in criminal matters and in public order and security

EU strategic level and also within the individual Member States. The recommendations presented here reflect that improvements to the “whole system” are required. There are therefore goals that can be achieved in the short, medium and longer term. Some require action from individual Member States in terms of their assessment and management of such offenders and some require the profile of SOMEK offenders to increase at an EU strategic level, in order to become a fundamental part of other working streams such as the DAPIX Single Point of Contact (SPOC) project and the SIS/SIRENE Working Group. There is no indication from the SOMEK research that yet another form of information exchange is required, but certainly there is scope and appetite for maximising the potential of existing tools to improve practice and cooperation in this area.

This concluding section will summarise the key issues presented in this report, offering potential solutions and linking to the **Full List of SOMEK Recommendations** in section 8. Whilst different combinations of the recommendations may address the various issues highlighted here, if improvements occur in isolation their impact is likely to have some profound limitations. Therefore it is re-emphasised that action needs to occur at a front line practitioner, national policy, regional and EU wide strategic level for comprehensive and effective developments to be achieved. It is vital that this broader commitment is recognised and a “whole systems” approach is pursued.

### **7.1.1 Issues arising from the research**

The core issues emanating from the data analysis are presented in four stages:

**7.2** The internal identification and assessment of serious violent or sexual offenders in Member States and being ready to exchange information across the EU.

**7.3** The current use of EU information exchange systems for conviction data, investigation and police intelligence exchange, and proactive/preventative information exchanges.

**7.4** The monitoring and management of serious violent or sexual offenders across EU borders.

**7.5** Using information received on serious violent or sexual offenders arriving from other EU Member States to improve the domestic management and monitoring of such offenders.

The establishment of a comprehensive national and EU position on SOMEK offenders starts with consistent and effective methods across the EU Member States for identifying and

assessing those individuals who pose the highest level of harm both during and upon completion of a formal sanction. Clear accountable lines of responsibility for the transfer of a comprehensive package of information to other Member States when a serious violent or sexual offender is known, or thought to be mobile across the EU should then occur. When information is communicated across EU borders the responsibilities of the receiving Member State to take appropriate preventative action should also be clear and realistically achievable. SOMEK project recommendations are designed to offer potential for the appropriate policy and practice changes to occur to achieve these aims.

## **7.2 Definitions, internal identification and assessment of serious violent or sexual offenders in Member States and being ready to exchange information across the EU**

### **7.2.1 Key points from the SOMEK research**

- There is a general consensus with the selected European Criminal Record Information System (ECRIS) offence codes as a starting point to define serious violent or sexual offenders, and arguably this provides the basis of a common EU wide understanding.
- Further identification and assessment is required to robustly identify those offenders about whom information should be exchanged. At present systems and processes to internally identify such offenders within Member States are diverse, and occur at differing points in the criminal justice system. Effective and compatible EU wide processes for identifying SOMEK offenders have not yet been established.
- Formal assessment tools are rarely used, and the lack of communication between the judiciary, police and offender management/probation personnel can inhibit the accurate identification and assessment of such offenders.
- Convictions acquired in other Member States have yet to be fully embedded into a number of national legal frameworks despite the mandate of FD 2008/675/JHA.
- Many Member States need to address internal issues of communication and information sharing at a National level before they will be ready to exchange across EU borders.

### 7.2.2 Potential solutions

- The development of common EU wide standards for assessment, and a minimum standard of relevant information that should be used to identify such offenders.
- The development of protocols at Member State level for collaborative working between all relevant criminal justice personnel in order to improve national identification and assessment of such offenders.
- The development of an internal national data base to record such offenders.
- Member States should exchange information via FD 2008 675/JHA and use convictions acquired by Home nationals in other Member States to appropriately assess and sentence such offenders.

### 7.2.3 Recommendations to achieve these improvements

**At EU Level – 2, 7.** Click on number to follow link

**At Member State Level – 11, 12, 16, 17.** Click on number to follow link

## 7.3 The use of current information exchange systems for conviction data, intelligence exchange, and proactive and preventative information exchange

### 7.3.1 Key points from the SOMEK research

- The exchange of conviction data information via ECRIS can be approached primarily as an administrative function and the importance of making requests and obtaining conviction data at other stages of criminal proceedings is not yet fully embedded into law enforcement and judicial practice across the EU.
- The appropriate dissemination at a national level of conviction data acquired from other Member States needs to be reviewed.
- A range of existing mechanisms are currently used for other forms of information exchange for police intelligence and investigation purposes. However levels of expertise and familiarity with the potential of the exchange tools available varies across the EU law enforcement community.

The knowledge and understanding of the permissive EU framework which enables proactive/preventative exchanges to occur is limited.

Other key factors which are seen to limit the effectiveness of criminality information exchanges across EU borders are the quality of the information provided, the timeliness of its receipt and differing perspectives of its importance or urgency.

- A Single Point of Contact (SPOC) for all forms of criminality information exchange, where mechanisms such as Schengen SIS II, Interpol and Europol facilities and where bilateral or multi-lateral regional agreements may be housed and managed has been presented as a model of good practice.
- Mobility across the EU, should not be viewed as a process of exchanging information and 'passing on the risk', rather there should be a sense of jointly managing the risk posed across two or more Member States.
- Details of the offender's movement or 'disappearance' are important. The possibility of developing a dedicated EU alert system where the ultimate destination for mobile serious violent or sexual offenders is unknown is an important consideration.

### 7.3.2 Potential solutions

- All EU Member States adopt a proactive approach to conviction data exchange via ECRIS recognising the importance of convictions acquired in other Member States in accordance with FD 2008/675/JHA.
- The permissive EU framework and supporting governance guidelines for current methods of proactive /preventative exchange should be more widely understood. The Swedish Framework Decision 2006/960/JHA principle of availability for EU law enforcement exchanges should be more strongly embedded into all national legal frameworks.<sup>102</sup>
- Higher levels of knowledge and expertise need to be achieved in the proactive use of all cross border information exchange mechanisms to prevent future crime across the EU community, incorporating the SPOC model.

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<sup>102</sup> The principle of availability under the Swedish Framework Decision 2006/960/JHA, sets timescales for information exchanges across EU borders and advises that communication should not be hampered by formal procedures, administrative structures and legal obstacles.

- A standardised package of information should be developed, which meets an agreed quality threshold to enable information exchanges across EU borders to occur and ensures a proactive response is seen to be justified.
- Further work should be undertaken to ascertain the most appropriate channels for different types of proactive/preventative exchange, both where the destination of the offender is known and where a more general alert is required.
- Effective links should be made with the SIS II/SIRENE working group and SOMEK representations should be included in the review of SIS II in 2015.

Some facility for a general alert is already available. Subsection 2b of Article 36 of the SIS II Council decision enables Member States to make such an alert.<sup>103</sup> Establishing the threshold criteria for making a serious violent or sexual offender subject to an article 36 alert on a proactive/preventative exchange basis needs to be determined, albeit that several Member States are already clear that they can highlight individuals in this manner. Other respondents have advocated a further development to SIS III, with the addition of a new dedicated alert for serious violent or sexual offenders which permits a more overt response.(see also footnote<sup>104</sup> re Interpol Green Notices)

### 7.3.3 Recommendations to achieve these improvements

At EU Level – **7, 8, 9, 10**. Click on number to follow link

At Member State Level – **11, 12, 15, 16, 17**. Click on number to follow link

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<sup>103</sup> Schengen SIS II sec 36b “Where an overall assessment of a person, in particular on the basis of past criminal offences, gives reason to suppose that that person will also commit serious criminal offences in the future, such as referred to in Article 2 (2) of the Framework Decision 2002/584/JHA”. Such alerts have the benefit of being directly accessible to front line law enforcement personnel with instructions as to what action should be taken under the provisions of a ‘specific check’ or ‘discreet surveillance’. However, the full circumstances relating to the alert are only available via a request for supplementary information which is subsequently made to the relevant SIRENE Bureau.

<sup>104</sup> Advocates have also emerged during the SOMEK research for an increased use of Interpol Green Notices as an alert system for violent or sexual offenders. An account of their under use in this respect is well established, coupled with observations of the need to rationalise the use of Green Notices overall, to ensure a targeted use which is both manageable and effective (De Pourbaix-Lundin 2010). Green Notices have proved useful for Member States with non EU Borders, although the wider 190 international state membership has also raised concerns from others regarding the varied standards of data protection and commitment to human rights issues when exchanging information outside of the EU community



## 7.4 Monitoring and management across borders and using information received

### 7.4.1 Key points from the SOMEK research

- Some form of monitoring for serious violent or sexual offenders serving part of their sentence in the community is widespread and restrictions of various forms are common across the EU. It is not always clear what length of sentence or specific type of offence triggers these measures. In some instances such provisions only apply to sexual offenders. Violent offenders appear to have less priority.
- The differing availability and use of conditional release/conditional liberty is problematic. Where there is no conditional release, Member States can be reluctant to, or are simply not permitted to exchange information. Domestic monitoring will have ceased, or only occurs informally. Changes to this situation would require some Member States to make changes to their penal code and some will be reluctant to do this. Only three Member States reported any use of extended monitoring arrangements, these included sex offender registration and notification systems, the use of civil orders, and lifelong restrictions under public protection sentences.
- Where respondents had knowledge of deportation arrangements for violent or sexual offenders, the type and route of information exchange varied, utilising Embassy personnel, Interpol, Europol, liaison officers, and notifications to national police. It was not clear how often receiving information on a deportee was considered to be useful, or how often this was passed to regional police or probation services.
- Implementation of FD 2008/947/JHA is fragmented. There is potential for it to apply to serious violent or sexual offenders if the information templates are developed to clearly highlight risk of reoffending factors for violent or sexual offending,<sup>105</sup> however, issues of equivalence in sentencing remain.
- Member States have differing views over the ethical use and efficacy of foreign travel orders. A number of Member States do not have the internal domestic legislation or monitoring arrangements to make their use possible. Where they do

<sup>105</sup> Adaptations and additions to the offence list on pages 69-70 could be made to capture those most pertinent to SOMEK offenders, with the inclusion of victim targeting information, modus operandi, protective factors, and required risk management measures.

exist, arguably they have not been widely used and the challenging practicalities of their enforcement remain.

- In the majority of Member States convictions, including serious offences are expunged or erased. The timescales for this vary. This can create difficulties in transmitting accurate information about serious violent or sexual offenders or tracking them across borders.
- Significant barriers to effective information exchange identified by offender management personnel included: differing languages and cultures; inadequate national information exchange procedures; cost and resource issues, lack of trust; and lack of incentive for the relevant agencies to engage in either domestic level inter-agency work or cross border communication. Where informal or formal information exchange does occur this is most usually between Member States who share a land border and have shared operational imperatives to manage transient offenders.
- The varied manner in which judicial, offender management and law enforcement responsibilities were held across EU Member States makes it difficult to identify relevant counterpart personnel. In some instances this issue has been overcome by the use of Single Points of Contact (SPOCs).

#### 7.4.2 Potential solutions

- Agreeing at EU level those serious violent or sexual offenders about whom information exchange and monitoring should take place beyond the completion of a formal sanction/sentence.<sup>106</sup> Strengthening an understanding of the permissive framework for proactive/preventative exchange such as the Swedish Framework Decision 2006/960/JHA. Increasing its adoption under national legal systems.<sup>107</sup>
- Increasing the appropriate use of conditional release for serious violent or sexual offenders and ensuring that appropriate conditions are set at court.
- Reviewing and strengthening the implementation and use of FD 2008/947/JHA, and in particular adapting the information template for use with serious violent or sexual offenders to provide a standardised package of information.

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<sup>106</sup> This is challenging for most Member States, particularly those using Roman Law systems within which a public official is allowed to do only what is prescribed by law.

<sup>107</sup> There is the potential for law enforcement and offender management officials to underestimate what they are permitted to do under existing arrangements such as the Swedish Framework Decision 2006/960/JHA

- Learning from current good practice, and establishing a system of SPOCs which incorporate offender management expertise in working with serious violent or sexual offenders.
- Improving knowledge of deportation arrangements and improving the information package sent with deportees. This could mirror the information package for transfer of serious violent or sexual offenders as adapted from FD 2008/947/JHA.

### 7.4.3 Recommendations to achieve these improvements

At EU level – [3](#), [4](#), [6](#), [8](#), [10](#). Click on Number to follow link

At MS level – [12](#), [14](#), [16](#), [17](#). Click on number to follow link

## 7.5 Using information received to improve domestic management and monitoring of incoming foreign national serious violent or sexual offenders

### 7.5.1 Key points from the SOMEK research

- There are contrasting responses to incoming proactive/preventative exchanges of information. For many Member States, the response is reactionary where the information simply becomes intelligence data only.
- Member States who do not see themselves as able to send information are, for the most part, happy to receive it.
- Issues were raised around the over loading of communication channels with inappropriate cases, with insufficient levels of information that cannot be acted upon or where the level of potential harm identified is not high enough to justify proactive/preventative actions.
- Effective responses to incoming proactive/preventative information exchanges are those assessed on a case by case basis, by knowledgeable personnel (usually via a SPOC), and who are in receipt of good quality information.
- Information should be proportionate to the risk, justified and as comprehensive as possible to counter concerns from receiving Member States over privacy rights, data protection, and resource constraints.

- Offender Management/Probation personnel highlighted the importance of incoming information being disseminated promptly as appropriate on a national level by the receiving Member State.

### 7.5.2 Potential solutions

- The receipt of incoming information should occur via SPOCs with high levels of expertise and the effective coordination of the range of exchange mechanisms available.
- Proactive/preventative exchanges for transient serious violent or sexual offenders should be an integral part of the SPOC and EU wide information exchange remit.
- SPOCs should actively assess incoming information and ensure its appropriate dissemination within the receiving Member State to law enforcement, judicial and offender management personnel.
- Member States to review their collaborative arrangements for actively managing serious violent or sexual offenders.

### 7.5.3 Recommendations to achieve these improvements

At EU Level – [6](#), [7](#), [8](#), [10](#). Click on number to follow link

At Member State Level – [12](#), [15](#), [16](#), [17](#). Click on number to follow link

## 7.6 Improving the system as a whole

The Swedish Framework Decision 2006/960/JHA, Council decision 2008/615/JHA and supplementary guidance for Interpol, Europol and Schengen Information exchange mechanisms and processes all highlight a facility for the exchange of information between Member States for the prevention of a serious criminal offence. However EU wide confidence in pursuing these aims in relation to serious violent or sexual offenders and embedding these principles into national legal frameworks for crime prevention remains in its infancy. The appropriate governance of such exchanges is of course vital to ensure that civil liberties, data protection and privacy rights are observed. However where assessments of risk are systematic, comprehensive and therefore defensible and the risk of harm to others is clear, the rights of all EU citizens to life and to remain free from torture, inhumane and degrading

treatment<sup>108</sup> are also of paramount concern within every Member State and need to be protected. One person's rights should not become another person's risk.

The movement of serious violent or sexual offenders is now established, in some instances for genuine reasons of return to a home country, or travel for work or leisure. In other instances, travel is to avoid regulation and oversight in home countries, or to seek further offending opportunities (Thomas 2011). Freedom of movement is a fundamental principle of the EU community, however with it comes the need for the acceptance of a joint responsibility for the management of the small number of high risk violent or sexual offenders who will take advantage of these liberties. The identification, tracking, monitoring and information exchange about serious violent or sexual offenders moving across the EU becomes critically important as crime prevention and public protection measures. It is vital that they are done when required, justified and legitimate, and that they are pursued to the full extent permissible and expected under established EU arrangements.

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<sup>108</sup> Articles 2,3 European Convention on Human Rights



## Section 8 - Full List of SOMEK Recommendations

### At EU Level

1. The selected ECRIS list, ((See Appendix 1) with the exclusion of unintentional killing), is used by Member States to define serious sexual or violent offenders and forms the basis of identifying those offenders on whom information should be exchanged. Consideration should be given to the inclusion of kidnap.
2. The risk assessment definition, principles and guidance offered by *Recommendation CM/REC (2014) 3 of the Committee of Ministers to Member States concerning dangerous offenders*<sup>109</sup> is adopted for SOMEK type offenders and forms the basis of minimum standards for identification and assessment of serious violent or sexual offenders in Member States.
3. The EU wide position on post custody release, monitoring and supervision for this group of offenders is reviewed with a view to achieving greater consistency and harmonisation across Member States for this critical group of offenders.
4. An EU wide position is adopted to agree those serious violent or sexual offenders who should be identified for monitoring and tracking across EU borders upon the completion of their sentence/sanction, including those released from custody without conditional release.
5. A review is made of the implementation and use of Framework Decision 2008/947/JHA and its potential use with serious violent or sexual offenders, with attention to the issue of equivalence in sentencing/sanction particularly in regard to the transfer of conditional release/licence. (This recommendation will also require actions at no. 3 above).
6. Single Points of Contact should be established for both law enforcement and probation/offender management (SPOCs) to exchange information on serious violent or sexual offenders who travel across EU borders utilising a standardised information package (see Appendix 3). Receiving Member States should review arrangements for receiving information on serious violent or

<sup>109</sup> Adapted by the Committee of Ministers 19 February 2014 at the 1192<sup>nd</sup> meeting of Ministers' Deputies, available at: <https://wcd.coe.int/ViewDoc.jsp?id=2163607&Site=CM>; accessed June 3<sup>rd</sup> 2014; see also explanatory memorandum CM (2014) 14, add1, 1192 meeting 19-21 February 2014 available at: [http://www.coe.int/t/DGHL/STANDARDSETTING/CDPC/Bureau%20documents/CM\(2014\)14%20add1.pdf](http://www.coe.int/t/DGHL/STANDARDSETTING/CDPC/Bureau%20documents/CM(2014)14%20add1.pdf); accessed June 3<sup>rd</sup> 2014.

- sexual offenders and how such comprehensive information packages will be used to manage such offenders at a national level.
7. As required under FD 2008 675/JHA all Member States should routinely record, disseminate and take into consideration convictions acquired in other Member States during new criminal proceedings.
  8. Further promotion is required of the overarching EU legislative framework such as the Swedish Framework Decision 2006/960/JHA and the principle of availability which permits the exchange of information across EU borders on serious violent or sexual offenders for the prevention of crime.
  9. Current expertise across the EU is utilised to examine how a centralised coordinated response to information exchange on serious violent or sexual offenders is best achieved across the EU community. Where the destination of the offender is unknown, the potential of Section 36(b) of SIS II should be examined as part of the periodic reviews of SIS II alerts, to consider an enhancement of its applicability to serious violent or sexual offenders.
  10. The SOMEK Project and EU DAPIX SPOC working group recommendations should be jointly considered. Other relevant developments such as the SIS II/SIRENE working group review of SIS II in 2015 should be appraised of the SOMEK findings and recommendations.

## At Member State Level

11. Member States to adopt minimum standards for the assessment of serious violent or sexual offenders; and develop internal processes centrally to identify such offenders.
12. All Member States to develop protocols for collaborative working between law enforcement, offender management/probation and judicial personnel, in order to improve the effectiveness of the national identification and assessment of serious violent or sexual offenders. This should include the routine acquisition of accurate and full information on convictions received in other Member States for all relevant stages of assessment and sentencing. Extending the use of ECRIS for conviction data exchanges which progress beyond the statutory notification requirements should be promoted.
13. All relevant law enforcement and offender management personnel should have a comprehensive overview of existing methods of information exchange across EU borders, so informed decisions can be made regarding the most appropriate



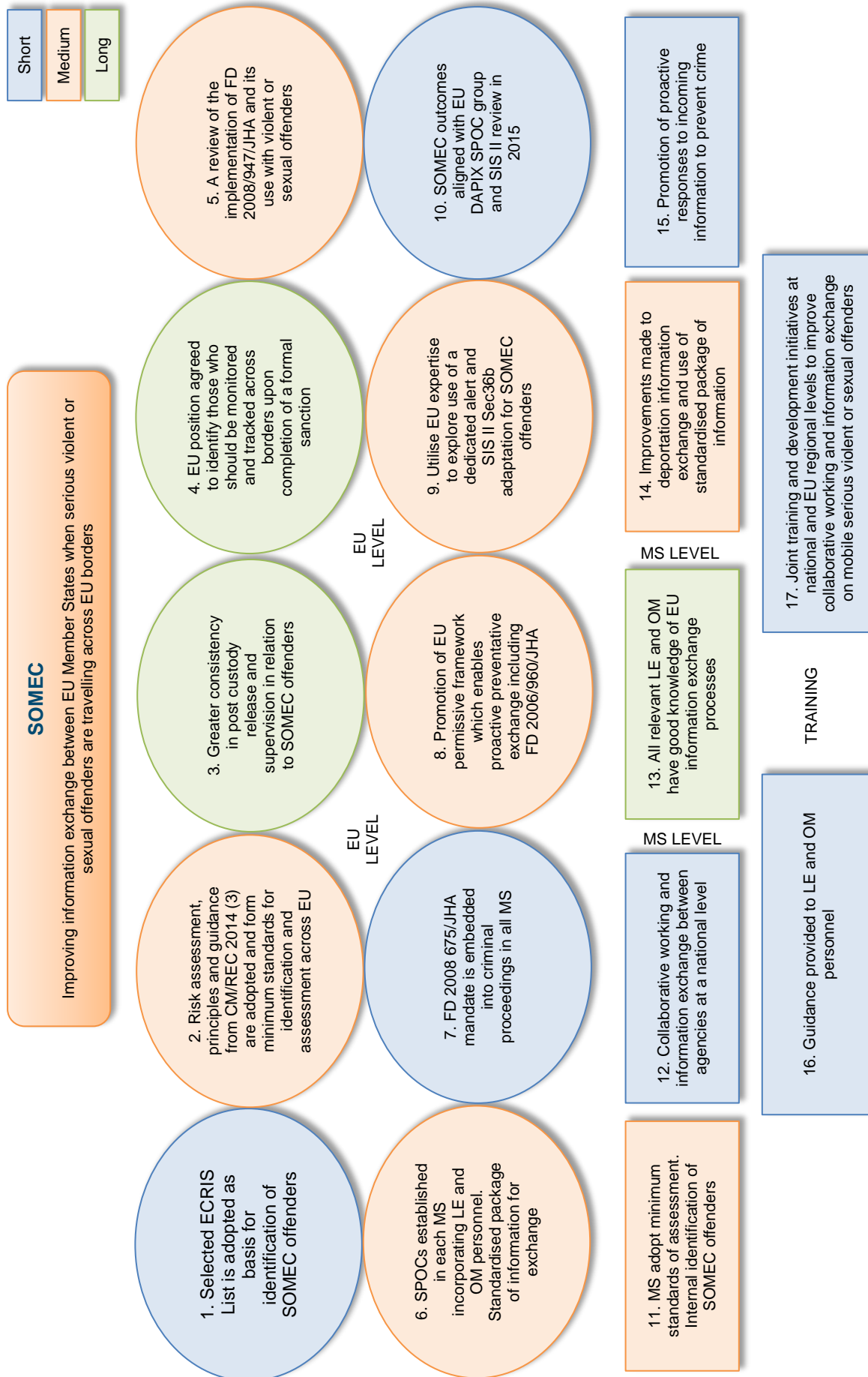
channel for the communication required.<sup>110</sup> This should extend beyond the staff located in the various forms of international bureau to other relevant levels of operational law enforcement and offender management staff, so they are aware of the resources available to them when a serious violent or sexual offender is moving across EU borders.

14. Improvements should be made to deportation arrangements for serious violent or sexual offenders, to include a standardised, comprehensive information package (see Appendix 3). Receiving Member States should review current arrangements for receiving serious violent or sexual offenders under deportation arrangements and determine how such comprehensive information packages will be used regarding such offenders at a national level.
15. With the development of quality, standardised packages of transmitted information, the promotion of appropriate responses to incoming information is required. Responses should seek to **prevent** the commission of further serious crimes and protect EU citizens from harm from serious violent or sexual offenders. This should include measures for the appropriate dissemination of received information at a national and local level.
16. Guidance should be provided to law enforcement and probation personnel.<sup>111</sup>
17. Joint training and development initiatives on information exchange should be pursued nationally across judicial, law enforcement and offender management agencies to improve information exchanges at a domestic level and the effective identification and management of serious violent or sexual offenders. Joint training should also occur between neighbouring Member States and regional relationship groups in the EU, to improve exchanges of information on serious violent or sexual offenders who are travelling across EU borders.

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<sup>110</sup> Guidance for both Offender Manager and Law Enforcement personnel will be available on the SOMEK website; [http://www.somek-project.eu/default.asp?page\\_id=577&name=Practitioners\\_Guidance](http://www.somek-project.eu/default.asp?page_id=577&name=Practitioners_Guidance). See also the Mapping Report on existing arrangements available at: [http://www.somek-project.eu/default.asp?page\\_id=565&name=Mapping\\_Report](http://www.somek-project.eu/default.asp?page_id=565&name=Mapping_Report).

<sup>111</sup> As above.



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## Appendices

### Appendix 1 - ECRIS selected list

#### European Criminal Record Information System ECRIS

#### Serious Violent and Sexual Offences

##### Violent Offences

Intentional Killing

Aggravated case of Intentional Killing

Unintentional Killing

Violence causing death

Causing grievous bodily injury, disfigurement or permanent disability

Torture

##### Sexual Offences

Rape

Aggravated Rape other than a minor

Sexual Assault

Rape of a minor

Sexual Assault of a minor

## Appendix 2 - Participant Consent Form

**Funded by the European Union, Grant Number: ISEC HOME/2011/ISEC/AG/4000002521**

### **Participant Information and Consent Form - Law Enforcement**

#### **Serious Offending by Mobile European Criminals, SOMEK - The purpose of the study**

Senior Practitioners in the areas of law enforcement and offender supervision are being contacted in all 28 EU Member States to ask them their views on existing information exchange procedures and offender supervision practices in cases where serious violent or sexual offenders travel between EU countries. The project objectives are as follows:

- To assess the threat posed to EU citizens when serious violent or sexual offenders travel between EU Member States.
- To identify the methods and effectiveness of mechanisms used by EU Member States in the management of serious violent or sexual offenders travelling across borders.
- To make recommendations to facilitate the improved exchange of information for the prevention of crime.

#### **Your role**

We are keen to find out your views on this subject and understand how things currently work in your own EU Member State to inform the final recommendations which will be included in the SOMEK report.

We are interested in:

- How EU Member States identify and manage serious violent or sexual offenders.
- How EU Member States identify serious violent or sexual offenders who may travel to other EU Member States.
- What existing methods of information exchange are used to inform other EU Member States of serious violent or sexual offenders who may be entering their country.
- What EU Member States do with the information they receive from another EU Member State about a serious violent or sexual offender entering their country.



## The Research interview process

A member of the Research Team will contact you shortly and arrange a convenient date, time and contact number to reach you on to conduct the interview, which should initially take up to about 1-1 ½ hours.

Before the interview you will be asked to confirm by email that you have understood this information sheet and agree to how the interview will be undertaken, how information will be stored and handled in any final report.

Should you wish to make arrangements to answer the questions in writing (this must be in English), please tell the researcher when they contact you and arrangements can be made for this to occur, with your written answers being sent to a secure email facility. The lead researcher will view and anonymise your responses for final report purposes.

## Recording, storage and use of any information provided

So we can ensure that we have fully understood the information that you provide in a telephone interview, they will be tape recorded and a written account of interview will be made. The resulting information may be used as part of a final SOMEK Report. We will endeavour to make sure that all personal, regional and national identifiers are anonymised and that you cannot be personally recognised from the information included in the report. We will not publish any material which has the potential to compromise public protection or which may harm actual or potential victims. **Should you be aware of any information provided which you consider to be of this nature you should alert the researcher at the point of interview or within 10 working days of its completion.**

The information you provide will be coded to ensure your anonymity and held securely. All audio recordings will be destroyed after a written account of the interview has been finalised. The research data from the project will be held securely at De Montfort University in accordance with EU standards and destroyed according to official security protocols after a period of 5 years.

Following the initial interview the researcher may ask if you agree to a follow-up conversation at a later date just to ensure that we can check any points we may be confused about from the first interview. They will advise you as to whether this follow up discussion will also be recorded. If there are just minor points to clarify, this may not be necessary.

You have the right to withdraw from the study up to 10 working days after the first interview has taken place without giving a reason and have any record of your discussion deleted.

Please contact the Research interview coordinator Sarah Hilder at De Montfort University UK if you subsequently wish to withdraw.

**Prior to the telephone interview which has been arranged to take place on: [Date]**

**With: [Researcher's Name] at: [Time] on: [Contact number provided by participant]**

**Please confirm by return of email to [Insert researcher's email address] that you agree to the following:**

- I have read the above SOMEK project participant information provided.
- I understand the purpose of the study and what I am being asked to do.
- I give consent that my telephone interview with the SOMEK researcher can be recorded.
- I understand that any written responses I might provide will be held on a secure server, reviewed and anonymised for final report purposes by the lead researcher.
- I understand that a written account of the telephone interview will be made and securely held for data analysis.
- All interview data will be coded and any personal identifiers will be held separately on an independent, password protected, encrypted database.
- I understand that the information gathered in these interviews will be used to inform a final SOMEK report and recommendations for improving practice across the EU. This report may be read by members of the public. I understand that I will not be personally identified in any such report and all references which may lead to the identification of individuals, regions or countries will be anonymised.
- The research team will not publish any material which has the potential to compromise public protection or which may harm actual or potential victims.
- I understand that I have the right to withdraw my consent up to 10 working days after the interview has taken place, or my written responses have been sent and should do so by contacting the Research coordinator.

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## Interview Schedule - Law Enforcement

### **SOMEc, Serious Offending by Mobile European Criminals.**

**Funded by the European Union, Grant Number: ISEC HOME/2011/ISEC/AG/4000002521**

#### **Law Enforcement Interviews**

This EU funded project seeks to recommend ways of improving cross border cooperation between law enforcement and probation agencies to enhance the ability of EU Member States to safeguard their citizens from harm from serious violent or sexual offenders.

**The SOMEc project objectives are as follows:**

1. To assess the threat posed to EU citizens when serious violent or sexual offenders travel between EU Member States.
2. To identify the methods and effectiveness of mechanisms used by EU Member States in the management of serious violent or sexual offenders travelling across EU borders.
3. To analyse good practice and make recommendations to facilitate the improved exchange of information for the prevention of crime.

We are keen to find out your views on this subject and understand how things currently work in your own EU Member State to inform the final recommendations which will be included in the SOMEc report.

We are interested in:

- How EU Member States identify and manage serious violent or sexual offenders.
- How EU Member States identify serious violent or sexual offenders who may travel to other EU Member States.
- What existing methods of information exchange are used to inform other EU Member States of serious violent or sexual offenders who may be entering their country?
- What EU Member States do with the information they receive from another EU Member States about serious violent or sexual offenders entering their country

## 1. Definitions of serious violent or sexual offenders

The SOMEK project is concerned with the harm posed to EU citizens when serious violent or sexual offenders travel across EU borders unmonitored. The attached list of offences (Appendix 1) selected from ECRIS shows the type of offences which may be included in this category.

Please look at this list of offences.

Do you agree this is an adequate overview of the most serious violent or sexual offences, as they would be viewed in your own country?

Are there any other offences that you would add to the list?

Are there any offences included in the list which you think should be excluded?

## 2. The Exchange of Criminal Data upon Conviction.

If an EU National is convicted of a serious violent or sexual offence in your country, when do you contact their Home Member State to inform them?

What method do you use to exchange that conviction data?

- ☐ ECRIS
- ☐ Other formal notification through Central Bureaux
- ☐ Informal regional arrangements
- ☐ Schengen SIS II alerts
- ☐ Interpol Green Notices
- ☐ Bi-lateral exchange arrangements
- ☐ Other (please state)

Which Governmental department in your country is responsible for this communication?

What type of information is exchanged?

- ☐ Current offence
- ☐ Previous convictions

- Offender assessment, i.e. risk of serious harm to others
- Modus Operandi, circumstances of offending, other intelligence data.

If a Home National has committed an offence in another EU Member State is your country provided with conviction data in the same way?

What are the benefits of sharing information in this way?

What are the factors that result in a helpful exchange of conviction data between EU Member States? Do you have any examples?

What are the factors that currently make conviction data exchange difficult and unhelpful?

Where the offender is a foreign EU National, what other methods of information sharing are used between EU Member States:

During a serious violent or sexual offender's sentence and/or

Upon the end of their sentence and release from prison?

### **3. The Exchange of Criminal Data prior to/without a new conviction, and for the purposes of investigation and arrest.**

Do you exchange police intelligence information with other EU Member States on their Home Nationals who are suspected of having committed a serious violent or sexual offence in your country?

What method do you use for the exchange of police intelligence information?

- Formal notification through Central Bureaux
- Informal regional arrangements
- Schengen SIS II alerts, SIRENE additional information requests
- Interpol Green Notices
- Bi-lateral exchange arrangements
- ECRIS
- Other (please state)

Which Governmental department in your country is responsible for this communication?

What type of information is exchanged?

- Current allegation/investigation.
- Previous convictions.
- Offender assessment, i.e. risk of serious harm to others.
- Modus Operandi, circumstances of offending, other intelligence data.

If a Home National from your country is suspected of having committed an offence in another EU Member State, is your country provided with police intelligence information in the same way?

What are the benefits of sharing police intelligence information in this way?

What are the factors that result in a helpful exchange of police intelligence information between EU Member States? Do you have any examples?

What are the factors that currently make sharing police intelligence information difficult and unhelpful?

#### **4. The identification and management of serious violent or sexual offenders.**

How are serious violent or sexual offenders identified in your country?

If someone is convicted of a serious violent or sexual offence in your Home Member State do any specific restrictions or methods of monitoring apply? For example:

- Extended sentence and licence provisions
- National, regional or City sex offender register
- Flagging system on criminal records or police information database
- Multi-agency risk assessment and management
- The imposition of foreign travel bans
- Notifications of residence
- Other (please state)

Are these restrictions regularly imposed? If not, at what level of seriousness and in what type of circumstances would they be seen as justified? If at all?

When do you think it is appropriate to stop serious violent or sexual offenders from travelling abroad? At what level of seriousness and in what circumstances should this happen?

At a National level, what type of information exchange occurs between the police and offender management/probation agencies on serious violent or sexual offenders?

If arrangements are made for the deportation of a serious violent or sexual offender from another EU Member State at the end of their sentence is your agency/department informed of this?

If so, how does this happen?

How is information about the sentence that has been completed and the level of harm posed by the offender communicated to the Home Member State?

From your agency perspective, what developments are needed at a National level to improve the identification and management of these offenders?

## **5. Serious violent and sexual offenders travelling between EU Member States**

Where it is anticipated that a Home National who has committed a serious violent or sexual offence intends to travel to another EU Member State, how is that information communicated to the other EU Member State?

What method is used to exchange that information?

- Schengen SIS II 36 Alert- for individuals who are likely to commit serious crimes or who are a threat to public security?
- Interpol Green Notices
- Central Bureaux contacts
- Bilateral agreements
- Embassy personnel
- Local/regional informal arrangements

- Other (please state)

At what level of seriousness of offending and in what circumstances would this type of exchange be considered to be justified, if at all? Can you give any examples?

If this type of exchange (without a current conviction) would not be seen as justified, why is this?

- If an exchange does occur, what type of information is provided?
- Most recent conviction.
- Previous convictions.
- Current level of monitoring in Home Member State.
- Restrictions imposed on travel if applicable.
- Nature of offending pattern and those most likely to be at risk.
- Any know information about travel intentions, connections with other Member States and plans.
- Anything else?

If an EU National who has committed a serious violent or sexual offence intends to travel to your country, do other EU Member States inform you of this in the same way?

What are the benefits of sharing information in this way?

What are the factors that result in a helpful exchange of information on serious violent or sexual offenders in these circumstances? Do you have any examples?

What are the factors that currently make such information exchanges difficult and unhelpful?

When you receive information that an EU National who has committed a serious violent or sexual offence intends to enter your country, how do you respond?

## **6. Receiving Information on the movement of EU citizens.**

What arrangements do you have for obtaining information on the movement of serious violent or sexual offenders?



Do you receive information under the EU arrangements for the communication of passenger data 2004 82/EC?

How might this be improved?

## **7. And Finally....**

What are the main changes you would like to see in the management of EU Nationals who commit serious violent or sexual offences and move across EU borders?

## Interview Schedule - Offender Management

### **SOMEK, Serious Offending by Mobile European Criminals**

**Funded by the European Union, Grant Number: ISEC HOME/2011/ISEC/AG/4000002521**

#### **Offender Management/Supervision Interviews**

This EU funded project seeks to recommend ways of improving cross border cooperation between law enforcement and probation agencies to enhance the ability of EU Member States to safeguard their citizens from harm from serious violent or sexual offenders.

The SOMEK project objectives are as follows:

1. To assess the threat posed to EU citizens when serious violent or sexual offenders travel between EU Member States.
2. To identify the methods and effectiveness of mechanisms used by EU Member States in the management of serious violent or sexual offenders travelling across EU borders.
3. To analyse good practice and make recommendations to facilitate the improved exchange of information for the prevention of crime.

The SOMEK Researcher will discuss the following topics with you. You may like to think about some of your responses in advance and make some notes.

#### **Offender Management Interviews – Areas for Exploration**

We are interested in:

- How EU Member States identify and manage serious violent or sexual offenders;
- How EU Member States identify serious violent or sexual offenders who may travel to other EU Member States; and
- How EU Member States identify and manage other EU Nationals who have committed serious violent or sexual offences and who enter their country.

This will require us to ask you questions about how you manage serious violent or sexual offenders within your country. It is important that we understand this, so that we can build up a picture of what happens when serious violent or sexual offenders are mobile across the EU.

## 1. The identification of **SERIOUS** violent or sexual offenders in your country

The SOMECE project is concerned with the harm posed to EU citizens when serious violent or sexual offenders travel across EU borders unmonitored. The attached list of offences (Appendix 1) selected from the European Criminal Record Information System (ECRIS) shows the type of offences which may be included in this category.

Please look at this list of offences.

Do you agree this is an adequate overview of the most serious violent or sexual offences, as they would be viewed in your own country?

Are there any offences that you would add to the list?

Are there any offences included in the list which you think should be excluded?

How are serious violent or sexual offenders identified in your country?

How does this happen?

Who does this?

At what stage?

What information is used to make this identification?

If the serious violent or sexual offender is an EU National from another EU Member State how do you obtain information about them?

Do you use the EU FD2009/315/JHA provisions to acquire previous conviction information from the Home Member State?

If so, how does this happen?

Who applies for/sends this information?

What type of information is received?

Do you have any examples where this type of cross border information exchange has worked well?

From your agency perspective, what are the main improvements to be made in the exchange of information on other EU Nationals to assist with their sentencing in your country?

## **2. The assessment of SERIOUS violent or sexual offenders in your country.**

How are serious violent or sexual offenders assessed in your country?

Who does this?

At what stage/ stages does this occur?

How is the result of the assessment used?

If the serious violent or sexual offender is an EU National from another EU Member State is any assessment information exchanged with the Home Member State?

If so, how does this happen?

Who is responsible for this communication?

At what stage/ stages does this occur?

What type of assessment information is provided?

Do you receive assessment information on Home Nationals who have committed serious violent or sexual offences in other EU Member States in the same way?

From your agency perspective, what are the main improvements to be made in the exchange of information between EU Member States at the different stages of offender assessment?

## **3. Responding to SERIOUS violent or sexual offenders in your country**

Does your country have any specific sentencing provisions for serious violent or sexual offenders?

What is the main purpose of the sentencing provisions for serious violent or sexual offenders in your country?

What legal measures, controls or restrictions can be used in your country to monitor serious violent or sexual offenders?

What is the process for imposing these measures, controls or restrictions?

What forms of intervention are there in your country for serious violent or sexual offenders?

At a National level, what type of information exchange occurs between offender management personnel and the police during a serious violent or sexual offender's sentence?

Once a sentence has been completed are serious violent or sexual offenders monitored in any way in your country if they continue to pose a significant level of harm to others?

From your agency perspective, what are the main improvements to be made in the response to serious violent and sexual offenders in your country?

Sections 4 and 5. Sharing Information on SERIOUS violent and sexual offenders travelling across EU borders

#### **4. Crossing EU borders- Deportation**

If a serious violent or sexual offender from your country is being deported back home by another EU Member State, is your agency informed?

If so, how does this happen?

Who sends/receives this information?

At what stage does this occur?

What type of information is received?

What would be the response to a deportation notification on a serious violent or sexual offender who is returning to your country?

If arrangements are made in your country for the deportation of a serious violent or sexual offender to return to their Home Member State, is your agency informed of this?

Does/would your agency exchange any information about the deportee's serious violent and sexual offending with the Home Member State?

## **5. Crossing EU borders - The supervision of SERIOUS violent and sexual offenders**

If a serious violent or sexual offender you are supervising in the community or upon release from prison intends to travel to another EU Member State what actions do you take?

Have you ever used the FD 2008/947/JHA provisions for the transfer of supervision across EU member States?

If you think the offender will ignore any travel restrictions imposed, or they have completely disappeared and may have gone abroad:

What happens?

Who do you notify?

What information is provided?

Are you familiar with any of the following EU/international information exchange systems?

- Interpol Green notice Alerts
- Schengen SIS alerts, SIRENE Bureau
- Europol Liaison officers
- Bilateral Information exchange agreements
- Prüm database
- Use of Embassy personnel

Would any of these be used to alert other Member States where a serious violent or sexual offender you were supervising was thought to be travelling across EU borders?

If so, how does this happen?

Who sends/receives this information?

At what stage does this occur?

What type of information is provided?

Have you ever received information about an EU National who has committed a serious violent or sexual offence and is entering your country?

How does this happen?

Who sends/receives this information?

At what stage does this occur?

What type of information is received?

How did/would your agency respond to such information?

Do you have any case examples of this type of situation where serious violent and sexual offenders have travelled across EU borders? What happened?

And Finally.....

- 6. Do you think it is ever appropriate to stop serious violent or sexual offenders from travelling abroad?**
- 7. What do you think are the main changes required to improve the management of serious violent or sexual offenders moving across EU borders?**

### **Appendix 3 - Standard information which receiving states would find essential to ensure the effective management of the person:**

- personal details
- current offence
- previous convictions
- modus operandi
- victim targeting patterns
- previous sentences and sanctions and responses to them
- treatment and interventions and previous responses to them
- relapse risk
- risk factors
- factors which may reduce risks (protective factors)
- measures required to manage the individual' risk
- travel arrangements and intentions where available
- intended victim details if known, or type of victim(s) most likely to be at risk